
BY THE HOUSE OF DELEGATES

January 23d, 1844.

Read and ordered to be printed.

R E P O R T

FROM

GEN. WM. G. McNEILL, late President

OF THE

CHESAPEAKE AND OHIO CANAL COMPANY,

TO THE

GOVERNOR OF MARYLAND.

WITH AN

A P P E N D I X .

DECEMBER, EIGHTEEN HUNDRED AND FORTY-THREE.

STATE DEPARTMENT.

Annapolis, January 23rd, 1844.

*To the Honorable
the General Assembly :*

I herewith respectfully submit, a copy of a report from General Wm. G. McNeil, late President of the Chesapeake and Ohio Canal Company. Also, a copy of the fifteenth annual report of the President and Directors of the Chesapeake and Ohio Canal Company, to the stockholders, and a copy of the report of Col. Abert, to the Honorable Secretary of the Treasury of the United States, touching said company.

FRANCIS THOMAS.

REPORT.

To His Excellency,

The Governor of Maryland.

SIR:—The approaching Session of the Legislature of the State admonishes me that, no longer restrained by causes and motives which heretofore induced silence, it is now my duty to address the Executive of the State, respecting the affairs of the Chesapeake and Ohio Canal, during the short period when, as President, I had the honor to administer them.

The large interest of the State of Maryland, too, in that great work, and the pecuniary obligations incurred in furtherance of it by every tax paying citizen give to the subject an importance, which would seem to impose the obligation on those entrusted with its management to submit, for the information of the people, the doings of their agents. In both these views, I think it becoming to make to you, Sir, the following:

REPORT.

Unexpectedly, as unsolicited on my part, I was, on the 3d December, 1842, by the unanimous vote of the stockholders, honored in an election to the Presidency of the Chesapeake and Ohio Canal Company.

At the next succeeding annual meeting of the stockholders at Frederick City, on June 6th, 1843, I was unanimously re-elected to that office. At an adjourned meeting of the stockholders, held at the same place, it was, on August 16th, 1843, in the opinion of a majority of the agents of the State of Maryland, to wit: four gentlemen who represented a majority of the stock, in substance—

Resolved, That it was expedient and proper to remove the then incumbent, and appoint another in his stead.

The reasons for this last step were alleged in a preamble and resolutions; which, with all the proceedings on that occasion and antecedently, will be found in the accompanying Report of Colonel John J. Abert, chief of the corps of Topographical Engineers; who was deputed by the Honorable the Secretary of the Treasury, as proxy on the part of the United States, to represent the interest of

the Government in the Canal. To that report, therefore, (which is here appended as a part of this,) I would respectfully refer you, as in discharge to a false and correct understanding of the very important part of the subject embraced in it; while, with all practicable brevity, I shall endeavor to restrict myself exclusively to matter of supposed general interest to the stockholders, and especially to the State of Maryland; to wit: *First*, The condition of the Work and the pecuniary affairs of the company, when I was called to the Presidency. *Secondly*, The measures which suggested themselves, and from time to time were proposed by me.

It is scarcely necessary to dwell on what is so well known for years had been and unfortunately still is—the lamentable condition of the Chesapeake and Ohio Canal company; nor is it, probably, more necessary to remind any one at all conversant with its affairs, that, in the unfeigned and undeniable—the notorious bankruptcy of the company. *Further legislation* on the part of the State of Maryland, at the time I took charge of the work was an indispensable preliminary to negotiation with the capitalist; who of course would look for *security*, before any investment on his part could be expected or even asked for.

Indeed, it is well known at Annapolis, from my intercourse with honorable members there when, two years ago, I responded in person to the invitation of the committee on Internal Improvements, and also, from my correspondence with the chairman of that committee, that I not only thought it necessary the State should release its prior liens, but in order to give the very best security—unquestionable security, (for the better the security, the more readily and the more cheaply would money be obtained,) that it should besides *guarantee the bonds* proposed to be issued by the company to the amount required to wit: Three millions of dollars to complete the Canal to and beyond Cumberland to Savage River; for, although it was contended that the trade, flowing from its termination at Cumberland, *might* reimburse for its construction that far, yet in its extension to the centre of the coal basin was in my opinion the only *certainty* of so desirable a result; and therefore it was due to the Legislature and all concerned, frankly to advise them at once of what it was most probable eventually would have to be communicated to them.

Especially were these views reiterated and adhered to in subsequent correspondence with General Tench Tilghman, on the part of the State's agents; and there was, I thought, reasonable ground of expectation that they would in part, if not wholly, be adopted by that body and enforced with its influence, inasmuch as it was after personal interview, at their solicitation, with three of the State's agents, and afterwards upon a report from one of the three, holding out to the stockholders their brightened prospects of success through my agency, that I became invested with the Presidency.

Accordingly, in my first interview at Frederick with the directors, (all being present—to wit: Colonels Tilghman and Coale, Doctor Wharton, and Messieurs William Price, Burkhart, and Ingle,) on,

or about 19th December, 1842—when, by previous appointment, I repaired thither to meet them,) it was stated to them that, in the embarrassed condition of the company—its prostration being obvious and its resuscitation absolutely dependent on Legislative action, (the State of Maryland in fact controlling the destinies of the work)—I knew not how I could in the interim be more usefully employed than in communication, personally, with capitalists, in order to ascertain from them on what terms, they, or others—at home or abroad—might become interested. In other words, I purposed to improve the short interval until the meeting of the Legislature, so as if possible to ascertain what legislation would probably be satisfactory to those on whom eventually we must rely for money.

Nor did I doubt of success—nor do I—nor can I: for, familiar as I have had peculiar opportunities to become with the history of public works of similar character, and with the treasures (till recently hidden,) in the vast mineral wealth of the Alleghenies, and especially those to be fully developed only by the completion of the Chesapeake and Ohio Canal, (and in the course of my service, somewhat active and for years continuously, I have, by order of my Government and on other occasions, been called on so to examine the Alleghany range, that literally I may say, I have climbed footed its crest and surveyed it instrumentally, and crossed it by its various ravines from the heads of the Susquehanna to those of the Savannah,) I know of no other such deposits of Bituminous coal and Iron ore, as regards either quantity or quality: nor are there any so eligibly situated in reference to a market.

But to return to my first interview with the directors. It remained to me only, in answer to enquiries, briefly to indicate the general plan, which (based on the abundant security that in furtherance of the interests of its own constituents might reasonably be calculated on from the speedy and favorable action of the Legislature, and the prospective intrinsic resources of the work) suggested itself to my mind as feasible. And then no suggestion being made by any director, but on the contrary doubts and fears, it may be even positive predictions of inevitable failure being expressed, the board, which was to re-assemble at an early day, adjourned; and I entered on my mission.

Difficulties were, of course to be expected, and at first, the main obstacle I encountered was in *not being heard*. Nor was this, however discouraging, to be wondered at by one who bore in mind the disappointment of capitalists and of all who trusted in the honor of these several States of the Union (Maryland unfortunately included,) from the unjustifiable omission, even to provide for the interest on our debts. Yet that provision and the eventual payment of all dues, principal and interest, being held out as the result, I was so far listened to, that, at my next interview with the board, (at Frederick, in January, 1843) I felt authorised to assume that on the simple relinquishment by the State of its *prior liens*, capitalists (bond holders of the State) would furnish the requisite means.

The propriety of the next step I proposed was, of course, easily recognised and assented to, viz:

That I should visit the seat of Government (and I found it necessary to remain there, till even the end of the session of the General Assembly,) in order to furnish the more readily, in promotion of essential measures, all the information touching the subject, that it was in my power to give, or that the Legislature might desire.

The course of Legislation at Annapolis, last winter, you, Sir, are are familiar with. The relinquishment of *priority of lien* on the part of the State, was not accorded, and in lieu, a bill (the existing law) was passed, authorising upon terms, *a sale of the State's Interest in the Public works generally.*

This at least, I thought and termed *an honest measure*: for although I deplored the sale, as a sacrifice of that which I believed (and still believe) would be a source not only of re-imbursement but of revenue to the State, yet it was based on an admitted indebtedness and looked to a final liquidation. At all events, its provisions now were determinate, and established our sphere of action, so far as dependant on the Legislature; and, therefore, it seemed plain that the bounden duty of the President and Directors of the Canal Company was, if possible, to make those provisions available—or, at least to try to do so.

Accordingly, when, soon after the adjournment of the Legislature, I next met the board, I submitted as the most important result of the past session, (so far as the Canal Company was concerned) an authenticated copy of the law, referred to; and, although disappointed in some of its provisions, I continued to state hopes and expectations that we might yet make that law effective.

To my infinite surprise—for in good faith, and confident of the hearty and cordial co-operation which I had every right to expect, I had rendered myself—I was told by one of the directors (Mr. Ingle,) that the *board had nothing to do with the law*; but the good sense—common sense—of others soon prevailed to the extent of its being admitted among the archives of the company.

My plan of operations, based on that law and modified of course to conform to existing circumstances, was then elicited and discussed, if discussion it can be suitably called, when nothing but doubts, professed fears and objections, even to a trial of success were interposed, and not a single suggestion offered, although on my part urgently asked for.

That your, Sir, may judge of that plan and its reasonableness, I will now state how I revolved it in my own mind, and how I thought aloud to the directors.

The law was to be—must be—our guide. When told it was unavailing and ineffective, it seemed to me that we could not yet, either respectfully or logically, undertake to say so; and I stated then, that I could not meet the Legislature and affirm its Act inapplicable unless *a failure on experiment had proved it so.* I proposed, therefore, to try that experiment at least,—especially as we could do nothing else, except remain idle at an expense of \$2,000 per

day to the stockholders, and then, if we failed, we could state why; and in a future representation to the Legislature, its members could act understandingly. But to go to Annapolis and say: "We have done nothing, because your deliberations were foolish—your law unavailing!"—as I said before, I had not the face to do it. In preference, I asked myself thus: How make this law, looking to a sale of the State's interest in the canal, available? How prove the worth of the canal, unless by showing its maximum cost and probable revenue?

And I ask you, Sir, who have personal experience in relation to this work, as one of its former presidents, would you undertake to go to any one out of the State—still less in it and say: *It is estimated !! to cost so and so*; when the whole history of the canal, since the repudiation of the accurate and disinterested estimates of the United States Board of Engineers, (howbeit, subsequent estimates of engineers in the employ of the company, have weakly been assented to be *sworn* to before the Legislature,) prove that they have uniformly been, and again might be utterly fallacious.

The simple reasoning in my mind was: The State has declared she will not relinquish her prior lien, but she will sell her interest for a specified sum. The purchaser to be sought, of course will ask first: Is it worth this specified sum? *Cost* being an essential element in estimating its worth, I will obtain that element by entering into a contract with responsible persons to finish the work for a given sum; and in proof of their responsibility, they shall first expend their own money (for we have none) to some respectable amount, say \$100,000.

Now, Sir, in your indulgence permit me, before proceeding further, to dwell a moment on the value to the work of even so small a sum as I have just mentioned. I am perfectly aware, from the proceedings of the Legislature in past years, from those of the stockholders (especially as set forth in the report of General Tench Tilghman, before referred to) and from those of directors on various occasions, that the proceeds of \$2,000,000, of the company's bonds or, their probable equivalent, the last *cash estimate* of the engineer (say \$1,550,000,) were uniformly contemplated as requisite to complete the canal even as far as Cumberland; yet viewed as a *means for ultimately procuring that amount*, the ability to say, that operations had actually been resumed, that the canal was once more at least in progress towards completion,—could not be entirely without its influence; indicating as it would, a still existing confidence at home and exciting energy, if not confidence, throughout our own country and abroad with capitalists, looking for investments on good security, and especially with bond-holders of the State of Maryland. But did it fail of this effect, it yet would have been something; if only in proof that we had awakened at last from our lethargy, that our faculties and energies were no longer benumbed, that we were prepared for action and self-confident; nor do I doubt that, having taken this single step, our march would have been steadily onward and triumphant. At any rate, the little which was

purposed to be but a little in cost, but replete with benefit—would have been a great saving; and, *at this time* its effect would have been experienced *throughout the work*, in an increased trade and in the revenue from a partial development of the resources of Allegany county, our ultimate and main reliance.

Partial did I say? Rather and more properly, sir, I might say, *almost the same development* as is so confidently predicted, by those who pertinaciously advocate and insist on it, from the final termination of the canal at Cumberland, or, in other words, from a continuous and navigable canal between Tide water and the town of Cumberland. This, sir, (I mean the result, not Cumberland) is the point to which I would respectfully call your attention and that of the Legislature; and the importance of which, unfortunately, I fruitlessly endeavored to impress on my colleagues—I should say rather, on the gentleman directors.

Doubtless by you, sir, familiar with the whole subject, I shall be understood, to allude to the comparative ease and the small cost at which the canal from Cumberland downwards, could be made navigable, to a point about opposite to the South Branch of the Potomac, (say 16 miles) below which to Dam No. 6, (135 miles from Georgetown) the Potomac River itself is navigable generally for the larger portion of the year: or, as expressed by a *stockholder* in his published "letter" to his fellow sufferers, "the origin and bearing of this \$100,000 matter is very intelligible to all those, whose recollections or reading go back to the time of the United States Board of Internal Improvements; as well as to those who are aware of the truly appalling difficulties which present themselves *on the land* between the South Branch and Dam No. 6, while in the same reach *the river is comparatively free from obstacles*:" and after citing the opinions of the PRESIDENT (to wit, myself) that \$100,000, judiciously applied would be sufficient to effect a temporary navigation along the whole line from Cumberland to Dam No. 6, and so in fact to open the whole canal, the same document proceeds "the value of such an opening of a continuous navigation, even if it sufficed only three months in the year, would be incalculable in whatever way it be regarded; and it is reasonable to suppose that the revenue would be thereby increased to an extent far beyond the interest on the sum that would be required to effect it."

Adopting, as I do, this concise view of the subject, allow me to analyze the matter, that it may be seen how far "*judicious*" application (so termed) of \$100,000, could supply the \$200,000, additional for to complete the canal below Cumberland to a point opposite the South Branch, and lock into the Potomac, about \$300,000, probably would be requisite.

It was to be effected by very simple means, sir; for the enterprise of the contractors, whom I introduced to the work, and who in their intelligence were not to be deterred by the backwardness of others, almost at once stimulated even former contractors on the canal job, having suffered much from failure of the company to meet its engagements, were wary of further reliance on, or encour-

ter with the trustees, as it were, of an estate in bankruptcy,) and *they, with others, now sought to be united in carrying out the existing contract.* On the same terms, precisely, as therein provided, they were unhesitatingly permitted by the new contractors to become so united; in which, it must be conceded, there was no very striking or conclusive evidence of extravagant expectations of *enormous profits* by the parties according it. In short, the extent of these sub-contracts, executed and in negotiation, with the availability of the bonds to be issued by the company to the contractors on account of their expenditure of \$100,000, to my personal knowledge insured abundant resources to open the entire navigation before the close of the past season.

Sir, the very *squatters* strewed with their families along the unfinished portion of the canal,—too poor, may be, to decamp and seek accustomed employment elsewhere, or, in hope deferred from year to year of revived operations, afraid, even if able, to be absent less they might miss the opportunity of again receiving their hard-earned wages—would have almost worked for their daily bread and in numbers sufficient our purposes.

I may not, on this occasion, more than allude to what may be considered extraneous to the proper scope of this report; but the expenditure at that time, in the generally depressed condition of our country, of even that comparatively small sum, (which I think has been shewn would readily have been provided and distributed in the vicinity of operations mainly,) would have relieved the wants and gladdened the hearts of many worthy, industrious, taxable and tax paying citizens of the State of Maryland and especially of Allegany and other counties. Wittingly, I beg leave to say, I could not have been made instrumental in exciting hopes and expectations, so soon, so uselessly and so cruelly to yield to proportionate and deep disappointment.

But to return, sir, to the measure just under consideration. I have fully, if tediously, disclosed my own reasoning on it, its importance in various remote aspects, its immediate effects, the means at command, adapted to the end. I beg it to be recollected, now, that however certain, as I think, was the consequent speedy prosecution of the whole work to entire completion, yet, by no act of mine was the Chesapeake and Ohio Canal Company—by contract entered into by me on their part, or otherwise, bound to proceed one single step further; and so far at not the cost of one single dollar:—but, on the contrary, the company retains in its own hands all the discretion it ever had, until the liens of the State of Maryland shall be surrendered; while the contractors are bound to go on (in sixty days,—they commenced however forthwith,) “whenever the company shall require them, liens or no liens.”

Again adopting the words of a document before extracted from, I will say that practically, “the contractors bind themselves to commence the work whenever directed; and to perform it precisely upon the terms and stipulations, which for two (now three) years

past the company has been supposed to have recommended to the Legislature, and which (until it is found they can be obtained) every body concerned has been ready to give ;” and which, it is quite material to recollect, no one but these very contractors, Letson and Co., would be induced to accede to.

With this exposition, I leave the consideration of this part of the subject and return to the narrative of events as they occurred.

Proposals, under the law and in the embarrassed condition of the company, were only to be elicited by more than ordinary exertion, and by personal intercourse in many quarters ; nor was it without much perseverance, that those were at length found who were willing to undertake the work.

Yet, though no formal proposal was submitted to the board at their meeting in April, positive assurances were then given that one would be ; and it was at that time discussed generally as if already submitted, as it was subsequently and in form at the next meeting of the directors, on the 4th May, up to which period I could not doubt its glad acceptance—conforming (as it did substantially) with the terms specified by the stockholders—the *only one*, then or since, which did. To make it thoroughly effective, however, and sufficient to our every purpose, our first dependence must be on the availability of the existing law ; and suffice it to say, the proceedings of the board at their meeting in April, closed with deliberation and action on my Resolution, “That———be authorised, requested and is hereby fully empowered to proceed forthwith to take all necessary measures to promote and effectuate a sale of the State’s interest in the Chesapeake and Ohio Canal under the existing law” &c. &c., (for I have no note to guide my memory as to the precise wording of the resolution) * : which, at an adjourned meeting the next day, was, on motion of Dr. Wharton, amended by “respectfully requesting the *President of the company*,” &c., and providing for the effectuation of the proposed sale *by a substitution of canal bonds for State bonds*, and passed unanimously. It may be well to state now, as I then did to the directors, that although the resolution as adopted would seem to limit the means, whether so designed, or not, they were in fact extended, for, while any one might buy the State’s interest for evidences of her indebtedness as recited in the law, no one could bargain to issue bonds of the company unless duly authorised to do so.

The idea, however, of this issue of canal bonds originated in the general exposition, which I was called upon to make (in order to solve the doubts of directors as to whether *any thing could be done*) of the several plans I had revolved in my own mind, by which the money we wanted might be procured, and it presented to holders of bonds of the State, the option of substituting an equal amount of bonds of the canal company, (in which case the

* NOTE—In the appendix will be found the communication which I made to the board at the time, enclosing the resolution ; a copy of which has come to my hands since writing the above.

company itself would become the proprietor, independent of the State, so far as the ability to control "prior liens" was concerned; otherwise they, (the State bond-holders) if they preferred, could become invested with all the present rights of the State as stockholder and creditor of the canal company. In either case, it was to be assumed that an adequate supply of money would be furnished or procured by those now becoming interested in the completion of the canal.

It was clear to me that on whomever devolved the negotiation with capitalists, he must take a comprehensive view of the whole subject; bearing always in mind, that not a dollar was to be asked for or expected, unless the investment could be shewn to be their interest *and fortified by good and ample security*. The general condition of our common country at large, was to be reviewed, especially in relation to monetary affairs; its indebtedness and deservedly impaired credit—that of the State of Maryland unfortunately forming no exception at the time in the just rebuke of creditors; and lastly the paralyzed and apparently expiring condition of the Canal company—disagreeable and mortifying as might be an allusion to either (especially in a foreign land,)—were all to be borne in mind, as matters inevitably involved in any project of relief. Or, as expressed in a letter from me, as President of the company, as early as 28th March, 1843, to Thomas W. Ward, Esq., the attorney in this country of the Messrs. Baring—wherein I attempted hastily a general review of the financial affairs of the State and of the company. "If you ask me how are we to effect this reduction of her debt, (that of the State of Maryland,) so far as is contemplated by a sale of her interest in the Canal; I answer simply—if I cannot prove it to be the interest of bond-holders of the State to make the purchase, of course, I do not expect they will. But should they conclude not to do so, it will not be because I omit to avail of the earliest opportunity to acquaint you and the Messieurs Baring with the (to my apprehension,) sufficient reasons to convert State bonds into Canal bonds and to aid by their co-operation and influence in furtherance of the speediest completion of the Chesapeake and Ohio Canal."

The "*sufficient reasons*" alluded to may, sir, be made apparent possibly to you and the Legislature, as I was and am confident they would have been to the sharpened intelligence of pecuniary sufferers; and it therefore becomes me, as probably is expected, that I should now state them, as I did to the directors, and meant to do, in proper time, to others.

In the then aspect of affairs—with our blemished fame—derelict as we seemed to be to our sacred obligations as a people—it would have been most vain and futile, if not presumptuous to attempt to address ourselves to any *foreigner*, (and capitalists *at home* are *foreigners* when money is involved,) or to any but him who, having a large stake, would be thankful could it be redeemed. Hence our main reliance was to be on one already interested, viz: *the bondholder of the State*. And how address ourselves to him, unless to

his intelligence? Relying on that, we could truly say—we come to you, because, as you hold the bonds of the State, which we want for our purposes, and we have the bonds of the Canal company (or the State's interest in the Canal itself,) to dispose of—you may be interested in learning facts to enable you to determine the comparative value of these several securities: let us analyze the matter, and from facts ascertain the real value of what you have and of that which we propose to you to substitute.

Such would be, and is the simple problem to be solved; and I had been at the pains to collate the necessary elements for its solution. From these elements it is a plain deduction, that if the whole tax now imposed by the State of Maryland were fully and punctually paid by its citizens, and the proceeds passed over to her creditors, then the bond-holder would receive, say, (for I do not profess to be precise,) 61 2-3 cents on every 100 cents due him by the State, or in that ratio. But instead of the whole of this tax being punctually collected, the returns shew that for the year 1841, the State bonds (measured by the adequacy of the tax for meeting the interest) were really worth but about twenty-seven cents in the dollar; while the Treasury-estimate itself for 1842, does not set their value (measured by the same standard,) at more than forty-eight cents in the dollar. In the Session of 1842—'43, nothing was done specially to amend the condition of the bond-holder in this regard.

Now without dwelling on the mortifying imputation, that as a people we could be brought to adopt the horribly demoralizing doctrine of *repudiation*, yet in prudence the bond-holder can not altogether lose sight of what he had measurably experienced from previous and existing delinquencies to be a question, viz: how long a people, goaded by various influences would bear an oppressive taxation, the more onerous because without the prospect of relief. And, in that prudence—while I, myself, discard the argument that in possibility he might get nothing—it probably would be as well for him if he fixed the maximum value of State bonds *at their real worth* under the existing tax; for if *that*, as has been shewn, be so difficult, if not as heretofore impracticable, to collect, it would seem hardly safe, or business-like, to rely on any increased taxation. So it is better to assume at once that the real maximum value of State bonds is but sixty-one or sixty-two per cent; a valuation just about *twenty per cent higher than their market price*, at the period now referred to.

That being established, now let us look at the probable worth of Canal bonds, or of the Canal itself; for the value of the former of course depends wholly on that of the latter. I was then, and am, prepared to shew—from the resources of Allegany County alone, from the supply to be afforded of not a luxury but a necessary of life, (fuel, such as we can get from no where else to our Atlantic board except from abroad, at twice the cost we could ourselves furnish it,) from the consequent demand for this article, from analogous reasoning based on the experience of every such Work similarly situated, in each and every aspect—that, there will be abun-

dant trade eventually to reimburse the whole expenditure incurred and required for its completion. But this, however interesting to ourselves at home, we will suppose the bond-holder indifferent to, if he gets a return simply of the money already invested by him on the faith of the State of Maryland, and of that which is further asked to complete the Canal.

What his present investment is we will assume at \$5,000,000; and the most that may be wanted for canal purposes at \$3,000,000; although the expenditure of that much, as shewn by the contract entered into, would depend entirely upon his own volition.

If, then, it could be proven, (as it can, and as I was prepared to prove,) that the Canal be worth simply but *surely* \$8,000,000, as viewed by the money lender. How then stands the account? In truth, it is a most simple calculation and may be thus stated:

$$\frac{5,000,000 \times 62}{100} = 3,100,000$$

that is to say, the purchase of the State's interest in the Canal may be made whenever there shall be tendered to the Treasurer of the State the amount of \$5,000,000 of State bonds, assumed to be worth sixty-two per cent. at most, (or twenty per cent. more than the market price;) and the bond-holder, then, becomes in fact invested with all the rights and privileges of the State, in both her capacities of stockholder and creditor, at a cost of but \$3,100,000, for what cost the State and eventually will be worth \$8,000,000.

But to make it worth that sum, \$3,000,000 more may have to be expended; and although, as provided by the contract entered into, it would be entirely optional with the purchaser to expend that much or any, yet, looking in the face every difficulty or objection, we will admit the bond-holder has to expend that much money, *in cash*.

Then \$3,100,000 cost of purchase of the State's interest, and \$3,000,000 cash to be expended, make \$6,100,000. The cost of absolute proprietorship in and mortgage on the whole work, worth eventually its total cost say \$16,000,000.

It was with such impressions and under such convictions I repeat, sir, that I felt it to be the bounden duty of the President and Directors at least, *to try if we could not do something*; in other words, to take the field at once—to enter into a positive contract on the most favorable terms, such as had been anticipated and recognised by the State, the stock-holders and the directors as properly most acceptable; to commence the work forthwith, as under that contract it was resumed—by correspondence and personal intercourse with capitalists, to fully acquaint them with our condition and its bearing on their prospects—to do all this in hope and confidence: but, if we failed of success, then at least to be able to state *why* to your Excellency and to the Honorable the Legislature; so that measures might be devised and adopted at the present Session, with a full understanding of the difficulties interposed and with special reference to a certain mode, so far as legislation be concerned, of overcoming them.

It was ordained otherwise, *Cui bono?* I confess my total inability to answer. But whatever the motive or the purpose of others, *my* course, as President, was too clearly indicated by the duties of my office to be mistaken, or to permit the plea on my part of inability to act, authorised, as I did not, and do not, doubt I was by the very measures of the Board itself.

I would not unnecessarily dwell on those measures: the archives of the Company should, and the report of Colonel Abert, does fully detail them. They are not however to be lost sight of, for the resolution of the Board of Directors in April, "respectfully requesting the President of the company to take measures to effectuate a sale of the State's interests," &c. &c.—followed up, as it was, by a formal resolution at their next subsequent meeting on the 3d and 4th May, and reiterated to the end, reciting the very terms on which they professed their *willingness* to enter into a contract; the disposition which I felt bound to ascribe to them and to the honorable the State's agents, from my intercourse with both bodies; finally, a recollection of the only object of the very honor conferred on me by my election to the Presidency,—left me, even if inclined to hesitate, no alternative but *action*. I did act, at length, and with a single eye to the promotion of the vast interests, ostensibly committed to me; and if the result be that not so entirely demented, or so coward of responsibility as to commit suicide, I have only reserved myself for assassination, sir, I prefer the alternative.

I pass by unnoticed here the objections made to my action, (or *any* action) on alleged want of authority and exception to the provisions of the contract. You, sir, and the stockholders, the STATE, must be as indifferent to them as I am; yet I would ask you to refer to the resolution under which I acted and the instrument itself, (a copy of which is hereto appended.) and I am abundantly content with the answer to this simple enquiry—*had I omitted to do* what I did, would it not have been much more easy for objectors, if so inclined, to refer to the reiterated authority of the board; by which I should at least have been self condemned?

In the invitation to the honorable trust confided to me and my acceptance of it, there were, sir, reciprocal objects in view on the part of the stockholders and myself. Yours, sir, (for I address you as the State of Maryland generally,) of course could not be ascribed to empty compliment especially in troublous times of State affairs, but rather as among the supposed means of prosecuting your Canal to completion in the speediest, and cheapest, and best manner, that in its productiveness the State might (so far as depended on that,) be disembarrassed financially, and her citizens proportionally relieved from an onerous and oppressive taxation. My object was—in disinterestedness? No, No! Sir, I saw and appreciated the great, the good motive you and all the stockholders had. I saw, too,—clearly saw—the great difficulties to be encountered. I weighed the matter, by night and by day, in a mind sometimes thoughtful; and I came to the conclusion that I could probably be instrumental in securing your object and therein be useful, and in

being so, (if you please) thereby *aggraudize myself*. That I am quite willing shall be ascribed as my object, as I am equally that it shall be determined if I sought it by other than worthy means.

FOREIGNER AND ALIEN, as I have been termed, I have been too long in the service of our common country to be so sectional that I would not almost, or quite, as soon serve Maryland as North Carolina, the State of my nativity; and believing that the relief of your State would point out the means to several similarly situated, I did confidently hope that an emulation of the example and success of Maryland would retrieve the condition and save the honor of all the States; suffering almost beyond endurance from similar causes—to wit: improvident expenditures on Public Works, *unproductive only because incomplete*.

I remain, sir, with great respect,

Your obedient servant,

(Signed,)

WM. GIBBS McNEILL.

Stonington, 23d December, 1843.

APPENDIX I.

(REFERRED TO IN PAGE TWO OF REPORT.)

Copy of a report of J. J. Abert, Colonel Corps of Topographical Engineers, to the Hon. J. C. Spencer, Secretary of the Treasury Department, in reference to the proceedings of a meeting of the Stockholders of the Chesapeake and Ohio Canal Company, held at Fredericktown, Maryland, in August, 1843.

To the Honorable J. C. SPENCER,

Secretary of the Treasury.

SIR:—The event of the late meeting of the Stockholders of the Chesapeake and Ohio Canal Company, the vote which I felt it my duty to give, as the representative of the United States stock, and the objections to the proceedings, in the character of a protest, which were made by me in the name of the United States, require in my judgement that I should submit to your consideration the facts and reasons by which I was influenced.

Although in an interview a few evenings before my departure for Frederick-town at which I explained my impressions in reference to the matters in controversy between the President and the Directors of the company, you were so kind as to say that you left the course to be pursued to my discretion, yet it appears to me that this very reliance is an additional reason for the explanation I am about to give, in order to show that your confidence has not been misplaced, or the discretion vested in me, injudiciously exercised. The only indications which were given by you in the way of advice, were that as the great object for which the company was organised was to make this canal, as all the efforts of the company had been for years directed to that object, as the completion of this work was the only means which could relieve the State of Maryland from its present losses and burthensome taxation, as well as other stock-holders from their losses, and as it appeared that this ob-

ject could now be accomplished, at prices to which all parties had agreed; it was extremely desirable rather to compromise difficulties than to destroy hopes, rather to reconcile misunderstandings than to defeat expectations—and therefore, it would be judicious to turn attention to such a reconciliation, and if possible to avoid the sacrifice of the great object for which the company was chartered, to secondary, personal and comparatively unimportant considerations.

It was under this general expression of your views, and after having examined with some care the proceedings of the stock-holders and the board of directors, that I went to the general meeting, somewhat prepared to act.

I arrived at Fredericktown on the 15th, the meeting of stockholders was to take place on the next day, the 16th, at 12 o'clock. At the hour appointed the meeting took place, but as there was not a majority of the stock present, the meeting adjourned to 4 o'clock on the afternoon of the same day. At 4 we again assembled, when there being a majority of the stock present, the meeting was duly organised. During the course of that day, I had been informed by two persons, that General McNeill, the president of the company, who had not arrived, was detained at home by the serious illness of a member of his family, and that if it should be in his power to attend the meeting, it would probably not be for a day or two. However much this was to be regretted, yet it appeared to me that it need not delay business, as the customary course of appointing committees could be had. I accordingly submitted a resolution, "that a committee be appointed to examine into the matter of a contract made by the president of the canal company, and into the action of the board in reference thereto." An agent of the State of Maryland, (Mr. Davis,) then requested that I would postpone the consideration of the resolution for a short time as he understood that in consequence of the absence of the president, the directors were preparing a report which would be submitted in the course of that evening, probably by 6 o'clock. I immediately yielded to the request, and the meeting adjourned to 6. We met again at the time appointed, and, as well as my memory serves me, in about an hour after we had met one of the directors of the company (Mr. Price,) presented the promised report. It was an elaborately drawn up paper, the tendency of which was to justify the directors and to criminate the president. It also contained matter which did not appear in the published reasons of the directors for rejecting the contract, at their meeting of the 20th of July; matter which had not before been brought to the knowledge of the public, or of the stock-holders, and of course, matter in reference to which the directors only having knowledge, they only could have formed an opinion. Moreover it should be borne in mind that all the matter of the report related to a controversy between two parties, upon which the stock-holders were to decide—one of these parties was the president of the company, the other, the body of directors; and all the knowledge of that controversy yet in the possession of the

stock-holders, was this ex-parte report, just received, from one of the parties to the controversy. Now, sir, it appeared to me that the position of the stock-holders, being that of a quasi-judges in this controversy, it was necessary to their self-respect, to their respect for principles of justice and of civil liberty, to their respect for the rights of every citizen, by whomsoever accused, not to decide upon the ex-parte representation of an accusee whose reputation was involved in our decision, and the moreso as the party accused was a gentleman of high standing, of great professional reputation, the president of the company, and was then absent. Therefore, as soon as the reading of the report was finished, and it took a long time to read it, I renewed my motion for a reference of the matter to a committee. The motion appeared to me as reasonable as just, and in strict accordance to established custom, and also to be due to our own standing for fair dealing. But to my surprise, immediately after making the motion, Mr. Davis, one of the agents of the State of Maryland, rose in his place, and as a substitute to my resolution, to refer the matter to a committee, offered the following :

“Resolved, That the proceedings of the board of directors of the 20th of July last, dis-affirming and disclosing null and void, the contract, entered into by the president of the company, with Thomas W. Letson and John Rutter, be and the same are hereby approved.”

“Resolved, That the said contract was entered into by the President, without any color of authority, and in utter disregard of the provisions of the charter of the company.”

“Resolved, That the interests of this company require a change in the office of President.”

“Resolved, That General William Gibbs McNeill be, and he is hereby removed from the office of President of the Chesapeake and Ohio Canal Company.”

As I saw the gentleman who moved these resolutions, take them already written from his pocket, and as I had heard from more than one of the agents of the State of Maryland, that it was their custom before offering a resolution, to consult and agree upon it, it was clear that the case had been pre-judged, and the course decided upon, before even the ex-parte report to which I have alluded, had been received by the stockholders and read to them.

I acknowledge, Sir, that I was both surprised and shocked by a proceeding which seemed to disregard even the appearance of a desire to do justice, nor could I avoid the reflection that the favorite epithet of a high handed measure, which had been so frequently applied to the act of the President, could with so much more propriety be applied to resolutions which condemned without a hearing, and executed without a trial. The President of the company was still absent, and these resolutions were offered as a substitute for one to refer the matter to the investigation and report of a committee of stockholders.

I found an able co-adjutant in the greater talents and more practised habit of speaking in Mr. St. Clair Clarke. But our efforts in

opposition to the resolutions were exerted in vain. The measure had been pre-determined, and the power to accomplish it was in the hands of the Maryland agents, that State holding a majority of the stock.

We urged every consideration which suggested itself to us, to induce a reference of the matter to a committee of stock holders, as a body which having nothing to fear and nothing to gain from the vote of the meeting, would be exempt from the great causes of biased judgement, and would therefore be exempt as far as human frailty could be from undue reliance upon partial representation. We referred to the character and public reputation of the President, to his absence, to the absence of all defence and justification on his part, and to the fact that the only representation of the matter upon which we were about to decide, was the ex-parte representation of his accusers, themselves seriously involved, as they were wrong if he was right.

But the greatest indulgence we could obtain, was an adjournment, without taking the vote until the next morning. In the course of that night the President of the company arrived. He was informed by a friend of the course which the proceedings had taken, and of the probable issue. He was as astonished as we had been. "What have I done," he asked, "that such an issue should be threatened?" "What have I done since my first election and invitation to serve this company, and my unanimous re-election of last June?" "What have I done, but devote myself with unsparing zeal, mind and body, night and day, to the completion of this great enterprise, under the belief that all the expressions of desire to have the Canal completed, so often repeated by stockholders and directors, were honestly entertained?" "What have I done, that is not authorized and is not good in itself?" We could answer these only by reference to the ex-parte statement which had been submitted to the stockholders.

On the next day at the hour of adjournment, 8 o'clock, the stockholders again met. The President of the Company was now present. The long and elaborate report from the Directors was handed to him. He of course, could not and did not read such a paper at such a time, but anticipating its contents from what he had heard, he made some verbal explanations, which the more convinced me that the matter should undergo the investigation of a committee, and he concluded, his remarks by requesting that a committee might be appointed. Having understood that objections to a committee had been made, from a strong desire of some of the Maryland agents to go home, he addressed a letter to me, which was read to the meeting, repeating his desire for a committee, to report at an adjourned meeting. With the view of obviating all objections, and of bringing the matter fairly before the meeting, I obtained leave to modify my resolution, so that it should conclude with a direction to report "*at this or an adjourned meeting,*" leaving the option to the stockholders, remarking however, that if desired, a report could be in, in the evening of that day by 5 o'clock, but urging the adop-

tion of an adjourned meeting, in justice, I will not say in courtesy, to the application of the President. But it was soon apparent that no indulgence would be granted, and that a decision of the question was determined upon to be taken that morning. Of course, but feeble efforts of defence could be made, under such discouraging circumstances, wherein those who were opposed to the substitute resolutions, felt the depressing influence of reasoning with those who had power in their hands, and who had pre-judged the case. Although, therefore, Mr. Clark, on one or two occasions went slightly into the merits of the matter of authority under which the President had acted; I continually declined making any remark of that tendency, declaring that in my judgement the time had not arrived for argument on that point, nor would it arrive until the matter should be referred to a committee, that committee should report, and the stockholders be in possession of a representation of the case, from a party not interested or involved in the issue before the meeting.

It was under such circumstances that the vote upon the substitute resolutions was taken. The power to the vote, the stock of the State of Maryland, is vested in five agents, any three of whom can cast the vote, only four of these agents were present at the meeting, General Tilghman being sick and absent. He however fully approved of the course pursued by the President of the company, and as I was informed, wrote a letter to that effect to his colleagues.

The vote upon the question of accepting these resolutions, as a substitute to my motion to refer the matter to a committee of stockholders, stood as follows:

For the resolutions as a substitute; the State of Maryland, (one agent absent)	10 279 votes,
C. H. Hammond, (private Stockholder,)	3

Total	<u>10,282</u>
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Against accepting the Resolutions as a substitute, the

United States,	2,008 votes,
The Corporation of Geo. Town,	508 "
The Corporation of Alexandria,	508 "
The Corporation of Washington (absent.)	"
Private Stockholders, J. J. Abert,	10 "
do do Jno. Kurtz,	5 "
do do R. H. Miller,	5 "
do do M. St. Clair Clarke,	5 "
do do C. W. Wever,	10 "
do do J. H. Alexander,	2 "
do do Walter Lenox,	4 "

Total	<u>3,065 votes.</u>
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The Corporation of Washington was absent. An ordinance of

the city appoints three persons to represent her stock, and requires that the vote shall be the vote of a majority of them. One only attended, and therefore the vote of that corporation could not be received. But the opinion of the one who did attend, Mr. W. Lenox, can be inferred from the vote of his private stock, and I am authorized to make the assurance from another, Mr. M. Magruder that if he had attended, he would have voted against the resolutions, so that if the city of Washington had been present, her vote representing \$1,000,000, would also have been cast against the Resolutions. It would not all however have defeated them, as the vote of the State of Maryland is greater than the combined vote of all other Stockholders.

This vote having decided the question of accepting these resolutions as a substitute to the motion to refer, the next question was, upon the adoption of the resolutions. Upon this question the vote stood as before, except in the accession of five votes in their favor. This accession was the vote of a private stockholder who was also a Director of the company, involved in the very matter in controversy. I consider it no more than an act of justice to say that he was the only Director who did vote.

The question however, was now settled, the resolutions were adopted, emphatically by the vote of the Maryland State agents alone, all others being against them. The adoption of the resolutions was not however, the less formal or effectual on that account the Maryland agents had the power and exercised it.

Refusing a committee of reference, refusing the application from the President of the company for a committee and that he might be heard in his defence, the agents of one of the old thirteen, pronounced judgment, condemned and punished, a distinguished man, in the most precipitate way, and upon no other evidence, statement, or representation than that which had been furnished the night before, by his accusers, themselves a party involved in the matter. Against such a proceeding I felt it my duty to protest. It mattered not whether upon the merits of the case the President of the company were right or wrong, the proceedings were harsh, tyrannical, precipitate, and in opposition to all received axioms of civil liberty, and of private right: and against such proceedings I felt it my duty to protest. Accordingly and before the meeting adjourned, I obtained leave to have entered upon the proceedings of that day, to be published with them, the following objections thereto.

P R O T E S T .

Colonel ABERT, in behalf of himself and others, asked leave to enter upon the proceedings of this day the following objections thereto, to be printed with the proceedings:

1st. Because the meeting has refused the customary and just course of referring the matter in controversy in these resolutions to the investigation and report of a committee.

2d. Because the decision upon these resolutions is evidently made upon a one-sided report from one of the parties involved,

namely the Directors; a report which can be considered in no other light than that of a justification and defence of one party.

3d. Because we believe that report to contain partial and erroneous inferences, personalities, and harshness, eminently bearing upon the character and conduct of one of the parties; a report which is, in fact, a defence of the Directors from themselves, and an attack upon the President, who was absent when said report was written and submitted to the Stockholders.

4th. Because we believe these matters require the investigation and opinion of an impartial and disinterested tribunal, namely, that of a committee of Stockholders: without which course a just and impartial exhibition of the matter before the stockholders will not be in their possession.

5th. Because that report from the Directors brings new matters to the knowledge of the Stockholders, not before brought to their knowledge; matters requiring deliberate and impartial investigation before a just decision upon them can be had.

6th. Because, from the personal explanation made this morning, August 17, by the President, (who arrived last night,) we are the more convinced that investigation and report by a committee is necessary.

7th. Because there is an application from the President (which has been brought to the notice of the meeting this day) desiring that the matter may be referred to a committee to report at an adjourned meeting; and that he may be allowed an opportunity to be heard in his defence and justification.

JOHN J. ABERT, (U. S. proxy.)
M. ST. CLAIR CLARKE,
ROBERT H. MILLER, (as proxy
for Corporation of Alexandria.)
CASPAR W. WEVER,
SAMUEL BURCHE,

AUGUST 17, 1843.

The undersigned did not affix his name to the above protest because he was disinclined to ask courtesy at the hands of those who had refused justice.

The appointment of a committee asked for by the representative of the United States and others, was refused by the agents of Maryland because they intended to return home the next day, and had not time therefore for an investigation. And the resolutions offered by the said agents were not discussed, (so far as the undersigned was concerned,) because he saw that the case was prejudged already; and that the resolutions themselves were intended to carry out what it was admitted had been aimed at more than one month earlier, and before the contract referred to in them had been entered into.

For these reasons, and more, the undersigned, at the moment of voting, made his verbal protest against the action of the agents of Maryland as hasty and inexpedient. He does so, and in the same words, still.

J. H. ALEXANDER.

It will be observed that their objections are confined entirely, to the course of proceedings, and that they do not enter upon the merits of the matter in controversy, that is, the contract, its authority and expediency. These points did not appear to me proper subjects for a protest under such circumstances.

But as the vote upon the resolutions after they had been received as a substitute to my motion, did involve an opinion of the merits of the case, and as I cast the vote of the United States, against these resolutions even under that aspect, it becomes me to show that I did not do so without reason.

These resolutions (already given in extenso) are in substance as follows :—

“1st—That the proceedings of the board of directors of the 20th July, declaring the contract null and void, be approved.”

“2nd—That the president of the company in making said contract, acted without any color of authority, and in disregard of the charter.”

“3rd—That the interests of the company require a change in the office of president, and that General W. G. McNeill be removed therefrom.”

The gist of the accusation, it will be perceived, is in the 2nd resolution: for if that be true the others follow as reasonable consequences, and the president cannot be held harmless for his conduct, we will therefore copy this resolution in full—“That the said contract was entered into by the president without any color of authority, and in utter disregard of the provisions of the charter of the company.”

It may be necessary to a correct understanding of the case, that some short history of this great work should be given as introductory to the authority which has been exercised, and has been denied.

The Chesapeake and Ohio Canal is among the most important works of public improvement which has been contemplated in the United States: nearly twenty years have elapsed since a convention of delegates appointed by the people of numerous counties in the State's of Virginia, Maryland, Pennsylvania and Ohio; and by the cities of the District of Columbia, met at the City of Washington, for the purpose of organizing measures, and devising means, to accomplish this great object. The President of the United States deemed it of such importance in a National point of view, that he gave to it a prominent position in his annual communication to Congress. The Legislature of the Union, after due deliberation, concurred in the views of the Executive, and not only granted a charter to a company organized for its accomplishment, but contributed by the subscription of one million of dollars, to the means of its execution. Maryland, the cities of the District, and Virginia, united their efforts in the same direction, while numerous private individuals contributed their means to carry out a measure which promised so rich a reward to the public and private interests embarked in the enterprise.

It is unnecessary more minutely to detail the history of this great and promising project. The hopes which had been fostered were doomed to disappointment.

The General Government declined any further aid to a work which is still as vitally connected with the interests of the nation as ever it had been, Virginia influenced by rival objects has bestowed but a slender portion of her patronage upon an improvement which owed its origin to the sagacious foresight of her own eminent Washington.

The District of Columbia exhausted by its efforts, has been unable to take a second step in its support, individual stock-holders feeling themselves incompetent to a measure of such magnitude have been compelled to regret the vain expenditures which they have made, Maryland alone duly appreciating the vast importance of the enterprise, has advanced her means with a noble liberality, till she has overwhelmed herself with the load of debt incurred in its accomplishment.

Under such circumstances of depression and embarrassment, a powerful effort was again made in 1831, to re-awaken the slumbering energies of all interested in the completion of the Canal. A convention was held in Baltimore in December, of that year, at which were present delegates from thirty distinct Counties and Cities, containing a population of at least a million and a half. Backed by all this imposing strength, every exertion was made to enlist the further aid of the General Government, and of the various States and Corporate bodies whose interests were felt to be so intimately interwoven in the successful prosecution of the work. The whole merits of the project were vividly presented, the diversified interests of the various sections of the country, faithfully and fully portrayed. All these appeals, and all these exertions have unfortunately proved unavailing.

In 1839, a minute examination of the entire line of the Canal, was made by a committee of Stockholders. The capacity of the work to reimburse all past expenditures and all further appropriations necessary for its completion, was satisfactorily shewn. The immense benefits which must result from putting the whole work into operation were demonstrated. It was shewn that until by the completion of the whole Canal when every part of it could be made available, the *annual loss to the State of Maryland alone, must exceed a half million of dollars.*

Four years have elapsed since the date of this report, and it is melancholy to reflect that independently of the losses sustained by other stockholders, in the interest upon payments actually made, independently of those which have been experienced by the others, but little progress has been made in the work, and that the State of Maryland alone, has, within this brief period sustained a loss by the accumulation of interest upon her investments, which would have been amply sufficient to complete the Canal to its western terminus at Cumberland.

The amount of this pecuniary loss, already so enormous, must accumulate with fearful rapidity until the work is perfected.

It was therefore obviously a matter of the deepest interest, to ascertain whether any means could be devised which would avert the heavy calamities, with which not merely the State of Maryland, but all other stock-holders are menaced. Such was the light in which it has been regarded, not only by the community at large, but emphatically, by all those to whom has been from time to time, confided, the administration of the affairs of the Company.

While all were assured that the only means of curing the ills under which the people of Maryland laboured, was the completion of the Canal, the utter impossibility of inducing that State to advance, even if she possessed them, further means to defray the necessary expenses, was apparent. When also it is recollected, that such means could only be supplied by the imposition of additional taxes upon an already suffering community, few could be found so wanting in sympathy as to recommend, none to indulge the expectation, that the necessary resources could be obtained from this quarter.

The only alternative open, was to procure the requisite means from the Canal itself; by making it the effective instrument of its own completion. This idea presented more to recommend it to public favor than to facilitate its execution. The revenues of the Canal throughout its whole extent, as completed, were already pledged to Maryland, as a fund to repay advances actually made. They could not therefore be employed either in whole or in part, as a means of obtaining credit with those who possessed the requisite capital, unless with the assent of this the principal and primary creditors.

It was in this position of affairs, that on the 4th day of August, 1842, a resolution was adopted, at a general meeting of the Stockholders of the Chesapeake and Ohio Canal Company, by which General Tench Tilghman, a representative of the State of Maryland, was appointed a committee to investigate the subject of raising funds to complete the Canal to Cumberland.

This duty was discharged with equal fidelity and ability, and the report made by this gentleman on the 3rd December, of the same year, is so important in every aspect of the subject, and contains views so entirely in accordance with my own, that I beg leave to attach it to this report, and to make the following extracts from it.

“As long as the pecuniary embarrassments of the State continue, so long will she be subject to the danger which now threatens her; and there is no mode by which she can now be relieved from her financial difficulties, unless it be *by the completion of the Chesapeake and Ohio Canal to Cumberland.*”

Then speaking of the modes by which funds could be raised to complete the canal, he says, “the mode referred to is simply this: To issue the bonds of the company, to the amount of \$2,000,000, to be given to any responsible party *who shall contract to complete the canal to Cumberland for that sum*; the payment of the said

bonds being secured by a mortgage on the tolls and revenues of the work, in the manner hereinbefore mentioned."

"The completion of the canal is to be made an indispensable condition, and to constitute the very foundation of the proposed plan; and it is hoped that this feature will go far to recommend it to the favorable consideration of the stockholders, provided that parties can be found willing to undertake it, and who are certainly able to fulfil their part of the contract."

It does not propose to limit the issue of bonds to the specific amount, for which it is estimated that the canal can be completed to Cumberland, for the estimates have always heretofore fallen short of the actual cost of the work, and a large allowance must be made for discount in any sale which might be made of the bonds, but it proposes to contract for the completion of the whole work, for a named sum (viz \$2,000,000,) whether that sum be found to exceed the actual cost of the construction or not, and thus to secure the attainment of the object which all former efforts have proved insufficient to effect.

"The estimated cost of the work to be done, is about \$1,600,000, and it is undoubtedly true, that the capitalists who might give this amount for the \$2,000,000 worth of bonds, would make (if the work should prove as profitable as it is supposed it will,) about \$400,000 by the operation. But when it is remembered *that the State of Maryland alone is losing more than the amount every year in interest on the stock, which she already holds in the canal, can there be a doubt as to the policy of adopting this course, at least if upon a full investigation it should prove to be the only mode by which the funds can be raised at this time?*"

"Believing that a proposition of this nature would receive the favorable consideration of the stockholders, and at the same time prove more acceptable than any other, both to the legislature and the people of the State of Maryland, the undersigned has devoted particular attention to this branch of the inquiry. On this point he is prepared to speak positively. He has not only received the most confident assurances that the required amount can be raised on the bonds of the company, but he is actually authorised, by parties who are generally believed to be responsible for the performance of whatever they may undertake in this respect, to say that they are ready to contract to complete the canal to Cumberland, for \$2,000,000 to be paid in the bonds of the company, at their par value, provided the legislature will place it in the power of the company to give the necessary security for the payment of these bonds, by constituting them a prior lien on the nett revenues of the canal between Georgetown and Cumberland, with the announcement of this fact, it would perhaps be proper to conclude this report. The undersigned desires however, to express the hope that he has not exceeded his authority, in procuring the most efficient aid in conducting this investigation which the circumstances of the case permitted him to obtain."

"For this purpose he solicited the co-operation of Major General

William Gibbs McNeill, a gentleman of the highest reputation in his profession, and who stands unrivalled for his success in the prosecution of similar enterprises, where the skill and talents of the diplomatist and financier were required in as great a degree as the scientific attainments and practical ability of the engineer."

"To the instrumentality of this gentleman, the undersigned acknowledges himself to be greatly indebted, for the information which he has now the pleasure to communicate, and for the further satisfaction of the stockholders he has obtained from him a written communication, in which his views are given in a more extended form on this interesting subject, and which he has the honor to present to their consideration herewith, together with a copy of a law referred to in the said communication."

"In conclusion, the undersigned begs leave to call the attention of the stockholders in general, but more particularly that of the agents of the State of Maryland, to the moral effect which may be anticipated from the successful adoption of the measure which is now proposed. If they can but hold out to the people of the State, some definite prospect of the completion of this great work, distrust, and despondency will be banished, with all their blighting influences and hope and confidence will be once more re-established amongst us. The taxes which are now grudgingly paid by those who cannot reasonably hope to receive any benefit in return for them, will then be freely loaned to sustain the State in her temporary difficulties. The credit of the State, which is now languishing, will then be rapidly resuscitated; and it may not be going too far to hazard the prediction, "that when the canal shall have been completed to Cumberland, the State will once more be enabled to obtain a loan on favourable terms, for the purpose of paying off the debt of \$2,000,000 which may have been contracted by the company in completing the work."

This report may justly be considered as the origin of the mode of doing the work upon the credit of the canal, for canal bonds for 2,000,000 dollars, or for the estimate of the Engineer, which General Tilghman states to be \$1,600,000. This estimate was for cash prices, but the credit of the company being much depressed it was considered that \$2,000,000, at least of its bonds, were necessary as an equivalent to the estimate.

Contemporaneously with this report, the stockholders by an unanimous vote, elected William Gibbs McNeill the President of the company; passed a resolution to increase his salary to the amount of \$6,000 per annum, "with the express understanding that no part of the said salary is to be paid until the amount of funds necessary to complete the canal to Cumberland shall have been procured, and that in consideration of the said increase of salary, the President of the company be required to devote his attention exclusively to the business of the company," General Tilghman was also requested to inform General McNeill of his appointment.

The views of the stockholders may be considered as embodied

in the report which had just been made, the appointment of the distinguished gentleman selected for the situation of President may be regarded, and it certainly was so intended, as the selection of an instrument to carry those views into execution, the payment of his salary being made dependent upon a successful exercise of his abilities to provide the necessary means to complete the canal, can only be regarded as a stimulus to excite him to the most strenuous exertions to accomplish this desirable object, while the requirement of his devoting his whole time to the business of the company, the whole operations of which in every other way were suspended until these means could be provided, obviously indicated that the time and talents of the new President were to be devoted to the organization of a plan, and the furnishing the means, in harmony with the report by which the incompleted part of the canal could be perfected.

Taking this view of the subject, General McNeill appears faithfully and zealously to have devoted himself to the performance of the responsible duties thus devolved upon him.

The Board of Directors is constituted of individuals residing at different and distant places. Insurmountable impediments exist to prevent them from permanent or indeed very frequent sittings. Official consultation between them and the President can only occur at remote intervals of time, and the circumstances to which I have adverted, naturally induced the impression upon the mind of General McNeill, not only that he was empowered to make all necessary arrangements and if practicable, contracts for the prosecution of the canal, but that these were in an especial manner the objects and end for which he had been selected for the office which he held.

I do not entertain, nor do I design, to countenance the idea that under the letter of the charter of the company the President can act independently of the Board of Directors, or in opposition to their will. They must act jointly, and when assembled in due form, constitute one body. But it is in many cases essential for the expediting of business that power vested in the board, should be delegated to, and be exercised by one of its members, or other constituted agent. This, it is well known, corresponds with the usage and practice of the company since its first organization. Nor has it unfrequently been the case that very important business has been transacted by individual members of the board, under an implied as well as express delegation of authority, and sometimes acts thus performed, without any original power, have been ratified and made effective by a subsequent approval and ratification. Under the Presidency of General Mercer, this authority was repeatedly exercised in highly important matters. Contracts were made, and subsisting contracts modified and varied, upon his sole responsibility. The validity of such acts was never, it is believed, controverted by the board, or by the stockholders; and it is well known that the performance of them has been enforced and their validity sustained by our courts of justice. In fact, it may be considered almost im-

practicable to conduct a series of operations liable to be effected by numerous and unforeseen consequences, demanding prompt action, without the existence, to some extent, of such discretionary powers in the head of the company. The character which such an officer must always be presumed to hold, and his ultimate responsibility, as well to the body which he represents as to the public at large, furnish sufficient security that the power will not be abused. And the question, in the present case, is not whether the words of the charter were literally pursued, but whether the authority given to the President by the course pursued by the stockholders, and the consequent course of the board, do not justify his act, and create an imperious obligation in the board, to give it form and confirmation.

It is clear, by the report from which so copious an extract has been made, what were the views of the stockholders, in reference to the affairs of the company, and of the means to restore them to good condition; and from the contemporaneous proceedings of the stockholders, as narrated, it is equally clear, that General McNeill, was the person selected with the especial intention of carrying those views into effect. It cannot, for a moment, be supposed that at the same time of selecting this gentleman as the President of the company, a board of directors were chosen merely to thwart and embarrass his efforts. The directors are but agents of the stockholders, the medium which under the charter of the company, is resorted to, to execute certain duties; the agents and servants of the company, bound like all other agents to respect not merely the direction of their principal the stockholders, but even the wishes of those stockholders in reference to their interests, when clearly expressed. It must therefore be supposed that when the plan of General Tilghman, as developed in his report, was made known to the stockholders, and they *with special reference to the execution of that plan*, induced the gentleman who was at the time President of the company, to resign for the very purpose, and which purpose was immediately effected, of placing General McNeill in his place; it must, I say, be supposed that the stockholders did not contemplate any other course on the part of the directors, than a hearty and honest co-operation in their views. To my judgement, therefore, the views of the stockholders, and the avowed objects for which General McNeill was chosen President, were as obligatory upon the board of directors, as they were upon the President.

The report of General Tilghman, bears date in December 1842.

The first action of the board of directors, bearing immediately upon the views of that report, was on the ensuing 13th of May 1843. On this day the President submitted a proposition, "that ——— be authorized to take all necessary measures to promote the sale of the State's interest in the Chesapeake and Ohio Canal Company, and to procure the means "under existing law," to enable the company to complete the canal to and beyond the town of Cumberland;" the proposition was laid upon the table for consideration at the next meeting. At the same meeting a proposition was received, through the Chief Engineer, to construct the canal to

the town of Cumberland, and for its extension to or near, the mouth of Savage. Of this last the board of directors took no notice.

On the 4th of May, the President submitted a proposition being the offer of a contract to complete the Canal; but the Board declined to accede to the terms. Then Col. Coale offered the following resolution, which was unanimously adopted:

“Resolved, That the Board are willing to let the entire unfinished portion of the Canal to Cumberland, or the west end thereof, under contract, upon such terms as it is in their power, legally to make—that is to say, they will enter into a contract for the completion of the whole Canal to Cumberland, or the western end of the unfinished part of the line to that place, provided, the person contracting and undertaking the work, will agree to receive the bonds of the Chesapeake and Ohio Canal Company in payment, payable in twenty years, bearing interest payable semi-annually. And provided, further, that ample security be given by the contractor, or contractors, for the fulfilment of the contract. The contract to be upon such terms and limitations as have been hitherto embraced in the contracts of this company, for the construction of the Canal. The work to be commenced in sixty days after the contract shall be entered into—and be completed in two years thereafter—and the Board are willing to give two million of dollars for finishing the whole, payable in the bonds of the Company, as aforesaid, or for less than the whole, a proportionable part of that sum, payable in like manner, with the condition, if current funds be procured by the Company, the work so paid for shall be paid for at the rate and estimate of the Chief Engineer, made in the year 1842—and now on file in the office of the Company. And the Board are further willing to give to such contractor or contractors, a lien upon the nett revenues of the Canal, subject and secondary to the existing liens upon the same, for the payment of the interest and principal of the Bonds that may be issued in fulfilment of said contract.”

We have now, for the first time, the terms declared by a unanimous vote of the board: upon which they were willing that a contract should be made. But when the stockholders met in the first week of last June, no contract had yet been made, the efforts of the President to obtain terms coinciding precisely with the conditions of the board having been ineffectual. Those who had offered for the contract were there, the stockholders in their intercourse with these persons, and in their informal meetings with each other appeared to entertain but one apprehension about a contract,—that it might operate to the prejudice of the sale of the interest of the State in the canal, although in my judgement, the reverse would be the real effect, for if the whole line were under contract, with the probability of its being completed, at an early day, not only the interest of the State of Maryland, but all other interests were enhanced by the prospect. But in consequence of this apprehension on the part of the agents of the State of Maryland and with the view of having the power to declare the contract void, in case its existence should be found to operate against the sale of the inter-

est of the State of Maryland in the canal, it was considered proper to bring the matter in the form of advice to the board of directors. It was also clear, that both the President and Directors required a little stirring up. Accordingly, the committee of stockholders of which I was chairman, and to which had been referred the communication of the board to the meeting, in that part of the report which alluded to the extension of the canal, used the following language: "2nd, of the extension of the canal. We are of opinion that the interest of the State, and all interests connected with, or to be developed by the canal, are eminently involved, in the early and substantial execution of the canal, in conformity with its plan up to the Town of Cumberland; and that to this end the energy of the President and Directors should be directed with vigor and perseverance." The limit "to the Town of Cumberland," in the report was merely because we did not think it possible that any satisfactory arrangement could be made for the extension up to the mouth of Savage; although such extension was extremely desirable, as it went to the centre of the great mineral basin.*

I then added to the report, at the request of the Maryland agents, the following sentences.

"With this general expression of opinion the committee, will bring to the consideration of the meeting the necessity of observing certain precautionary measures, which will now be indicated."

"1st.—That competition ought to be excited by public advertisement in the newspapers, before contracts be entered into—proposals to be received by the 26th June."

"2nd.—No attempt should be made by the company to purchase State bonds until the Treasurer shall have failed to effect sales of the State's interest in the canal—as authorised—say until the 10th July."

"3rd.—That no contract shall be entered into except with the condition that it may be annulled by the company after 30 days notice, at any time within twelve months after the date of said contract—or the payment of the per centum as damages upon the unexpended portion of the contract"

"4th.—Provided, however, that nothing whatever shall be done by the board of President and Directors, which may prevent or embarrass the sale of the State of Maryland of her interest in the canal.

This report was made on the 6th, and it will be observed that it was recommended to advertise for proposals until the 26th. It must be admitted that this was a very short notice for so extensive a contract, as no one but those at hand could possibly have bids in, in time. But in fact, we had all conversed with Mr. Letson upon his terms and means, and we had in contemplation no

* Note—In my own opinion, when I considered the bankrupt condition of the company and the depressed credit of the State, I was surprised at the offers which had been made, and was disposed to consider it an extremely fortunate event if a contract could be made upon the general outline of those offers.

other than the Letson contract when the report was made. All the efforts of the President, from the period of his appointment, to that day, had succeeded in obtaining offers from this person only, but as it was said there were others at hand ready to offer, notice by advertisement was advised.

The stockholders after acting upon this report, and re-electing General McNeill by a unanimous vote, adjourned to meet in Baltimore, on the 6th July. But before adjourning the following resolution was offered by one of the Maryland agents, and passed unanimously.

“Resolved, That the condition contained in the resolution which was passed at a general meeting of the stockholders, held on the 3d day of December, 1842, regulating the salary of the President of this company, be, and the same, is hereby rescinded.”

If you will recall the conditions of the rescinded resolution to your mind, you will find that the salary of the president was raised to six thousand dollars, but not to be paid unless funds, (i. e. —means,) to complete the canal to Cumberland, were procured, and unless he would devote his attention exclusively to the business of the company. But as these conditions were now removed, it must be supposed that the removal of them was because the company were satisfied with the efforts of the president, that they saw a contract could and would be made, and that the president had devoted his whole time to the interests of the company. It was well known that he had abandoned all his official relations with other companies, and as the only measure for completing the canal, which the president had submitted to the board and which had been in the contemplation of the stockholders, was proposals for a contract from Letson, it is clear that the Letson contract could alone have been in the minds of the stockholders, as the means to complete the canal, which justified the removal of the restriction upon the president's pay. It would indeed, be a poor compliment to the sagacity of the stockholders, or to the faithful conduct of the proxies of the great interests represented at the meeting, to suppose they would increase the pay of the president, from one to six thousand dollars, unless under the contemplation of active operations on the canal, and as the only means of active operations, which had been brought to the knowledge of the stockholders, were the Letson offers, it is clear that the contemplation of a contract on those offers is the only justification for this increase of salary, (see the 15th annual report of the president and the directors, submitted to this meeting, and the immediate subject of its deliberations, as explanatory of the views of the president and of his efforts to make a contract. On the next day after this report was received and read, 7 June 1843, the president was unanimously re-elected.)

The proceedings of the stockholders up to this period, exhibit a sentiment deserving of notice, namely—that their sole reliance for the completion of the canal was upon the *President* and upon him only: upon his efforts, arrangements and influence.

On the 7th June the board ordered the clerk to invite proposals: on the 28th of the same month, the day for receiving proposals having expired, the board met to consider those that had been received, but as none of these proposals were agreeable to the board; all of them were declined. But the board at the same time repeated its willingness to contract on the conditions of its resolution of the 4th of May, *adopting it again, verbatim.*

At the same time, however, the board passed the two following resolutions in addition:

“*Resolved*, That this board will at all times receive proposals in conformity with the above resolution.

“*Resolved*, That whenever the priorities of the State shall be waived or postponed, and the company be placed in a condition to exercise a full and exclusive control over the revenues and property of the company, this board will promptly enter into contract for the completion of the work on the most favorable terms.”

Now, the singularities of these resolutions are, that immediately after declaring they are willing to contract, and upon what terms, the directors declare themselves willing only to receive proposals, and immediately after declaring their willingness to receive proposals, they declare that they will enter into contract “whenever the priorities of the State shall be waived and postponed, and the company be thus placed in a condition to exercise exclusive control over the revenues and property,” &c. &c.

As the “priorities” of the State of Maryland could not be removed without a law of the State, as the Legislature was not in session, and would not be until during next winter, and as, therefore, before next winter there was not the possibility that these “priorities” could be removed, these two resolutions were an unequivocal declaration on the part of the board, that, *they would make no contract, on any terms whatever, until the State had acted as the directors thought proper to dictate.* In the word, the directors either did not appreciate the force of their own declarations in their two last resolutions, or they were determined to do nothing,—and this apparent determination is expressed, immediately after their declaration of a willingness to enter into contract upon terms which they specify. The resolution of the 4th of May, renewed and repeated on the 28th of June, is a positive declaration by the directors, authorising a contract on the terms of that resolution, and the two following resolutions, on the same day, the 28th of June, may be viewed as a no less positive declaration, that *they will not enter into contract on any terms.* It is not surprising, under such circumstances, that the president and the directors did not understand each other, and that there should have been a want of harmony of action between them. The president seems to have taken the resolution of the 4th of May,—repeated on the 28th of June, as the one intended for his guide, and particularly as it was also the one which promoted the interests of the company, and was in harmony with the directions and wishes of the *stockholders*, and with the declared objects of his appointment. This course also did justice to the

sincerity of the directors, as it was but a becoming compliment to their sincerity, rather to suppose that they were careless, than that they seriously intended to involve themselves in the apparent contradiction of their own resolutions.

The Stock-holders met agreeably to adjournment, in Baltimore, on the 6th July. This meeting was attended only by the agents of the State of Maryland. The proceedings of the Board of Directors, since the last meeting of the stock-holders, were laid before them, but no action was taken. The only resolution passed, was one throwing the President back again upon the salary of one thousand, upon the grounds, that no means for completing the Canal had been raised, that there was no prospect of raising any, or of letting the Canal until after the meeting of the next Legislature of Maryland, the work being therefore suspended, the salary of the President should be reduced. We here again see the expectations which were entertained of the President, the disappointment at his want of success, and the consequent punishment. But the singularity is that the agent of the State of Maryland, who alone formed the meeting, did not read the proceedings which were laid before them, for it is not to be supposed that they could have read them, without perceiving the real cause of failure on the part of the President to make a contract, and of his freedom from blame on account of the failure. The State agents however refused all interference with the matter of the contract, leaving this as it was, under previous stock-holders, directors, and with the President and Board.

On the same day of this Stock-holder meeting, the Board of Directors also met. Proposals to construct the Canal were submitted to them, but "were laid on the table for future consideration."

I have now sir, brought this narrative down to the last meeting of the stock-holders, before the contract was made, in which I have shewn the directions and views of the stock-holders, their expectations on the appointment of General McNeill, the authority for the contract in the directions of the Board, of the 4th May, and 28th June; the evident disappointment with the stock holders that nothing had been done, and their consequent reduction of the salary of the President.

There was an evident timidity on the part of the Directors,—a willingness to promise, but unwillingness to perform; and it could not be expected of the stock-holders, who met so rarely, that they would give directions upon the detail of a matter, which they had already generally authorized and directed. The conduct of the President is also not without fault, yet, it is one rather to be commended than reproved—a too great deference to the Directors. In my judgement, immediately after the resolution of the 4th May, he should have made the contract, which he afterwards made, in July. General McNeill, was also conscious of the fault of his delay, and after the adjournment of the meeting of the 6th July, just narrated, he (under the advice of one of the State's agents,) handed the proposals of Letson and Rutter, the most favorable that had been received, with the resolution of the Board, of the 4th of May, to one

of the most eminent Lawyers of Baltimore, and desired him to draw up a contract on those proposals, and in conformity with that resolution. The contract was then signed, sealed, and delivered. He then by letters to each, informed the Directors of the contract he had made.

The next meeting of the Board, was at the Canal Office, in Fredericktown, on the 20th of July; at which the President of the Company, verbally informed the Directors of the contract he had made, and also furnished copies of the letters of notification which he had written to them. The Directors then called upon the President (who had retired from the Board,) for the reasons for his course. His reply, in a short letter, refers to the uniformly asserted desire of the Directors, and to their several resolutions on the subject.

I have already brought the resolutions to your attention, something however may yet be said upon the naked question of authority, as derivable from these resolutions alone. It may be supposed that although the Directors had declared the terms upon which they were willing to enter into contract, yet, such a declaration did not confer power upon the President to make a contract on those terms, or reasonable ground for inferring that he had that power. In reply, I will say, the President is the executive organ of the Directors, he signs all contracts, the Directors never sign them. They merely assent to the terms—the President then executes those terms, he signs, he seals or directs the seal to be affixed; he delivers, and superintends the execution of the contract. The Directors are mere advisory agents, the whole history of the canal, the whole action under the charter, will prove them to be no more. But then, I will freely admit, their advice is an essential part of the action of the President, and is made so by the charter, whether this advice or consent be given before the action, as authority for it, or afterwards as a ratification, is in my judgement of no importance; but if given and sought before the action, it seems to me more in accordance with the spirit of the charter, and with sentiments of deference to the Directors.

Now referring to the proceedings of the 4th of May, it will appear that the President submitted, to the consideration of the board, certain terms or proposals for a contract. In this case he sought the consent of the directors, after the terms of a contract had been digested and reduced to form. The directors declined given their assent to this contract, but they immediately declared in the form of a resolution, unanimously adopted, the terms upon which they were willing to enter into contract, or in other words, the terms upon which they were willing a contract should be made, for as before remarked, the directors never enter into contract with any one, all the contracts being "between the Chesapeake and Ohio Canal Company, by the President thereof, of the one part, and of the other part." Here then it is seen, that the President submits a contract which is not approved, and that in the next breath the directors make known to him the terms, which they will ap-

prove. Here then is a case in which advice is sought and given before action. For was not this resolution of the board, clearly saying to the President you may enter into contract on these terms? To whom else was it said, to whom else could it be said, since the President and he alone can fulfill the form of making a contract? To my judgment the question of authority is extremely clear from these proceedings of the 4th of May; and if any doubt remained, on combining these proceedings, with the directions of the stockholders and the avowed objects for the appointment of General McNeill, doubt can be no longer entertained.*

He also paid every deference to the letter of the charter, by previously seeking their advice, and then by submitting the contract to the ratification of the directors. Now supposing the directors really and honestly intended to confirm a contract, upon the terms on which they declared themselves willing to enter into contract, I can see no adequate motive for declaring the one void that was made, for destroying the hopes and interests of the company, upon a point of etiquette, involving solely, sentiments of personal jealousy, and of personal consequence. It was their duty to have considered well the condition of the company, the nature, advantages and disadvantages of the contract, and faithful to the interests entrusted to their care, to have ratified a contract promotive of those interests, independent of all personal consideration. Then if in their judgment these were acts of the President, deserving of reproof, these acts could have been brought to the knowledge of the stockholders, separate from the matters of the contract, so that reproof could have been administered, if either party had been thought deserving of it, without destroying the hopes and interests of the company.

On the 20th of July, the board proceeded to consider the contract which had been submitted to them. In referring it, the President had desired in case of their declining to agree with him, that as the responsibility of the measure was his, "the subject may be referred to the next meeting of the stockholders." The board however, chose to act, and their action I am sorry, to say, confirms me in an opinion I had long entertained, that they would do nothing themselves, nor permit that President to do any thing which would eventuate in an early completion of the canal. There was a prejudice against him in the board, from their first intercourse, and a want of harmony, from which no other than the result which followed, could be anticipated. I saw evidence of this, at the stockholder meeting of June, and proposed a remedy by a change of at least two directors, but the agents of Maryland, holding the

*See the matters especially assigned to the President in the resolutions of the 4th of May, and let the question be asked to what else but to the contract authorised, so many of them refer. What else had the directors in mind by the words "to give *proposed* liens upon *its tolls and other revenues*, to the holders of the bonds *to be issued*, for the completion of the canal to Cumberland," &c.

majority of votes, did not see the matter as I did, and would not unite with me.

The first step of the board of directors, was to call upon two of their own members for a law opinion, as to the competency of the directors to disaffirm the contract. This opinion, was of course, as anticipated, in favor of that competency, and these two members, then resuming their place with the directors, gave their votes in favor of the declaration that the said contract was null and void.

The board however, gave reasons for their course, in the following words, which were immediately laid before the public, through the customary channel of a newspaper.

At a meeting of the board on Thursday last the following order was passed :

Ordered, That the articles of agreement submitted by the President, together with the statement made of the authority under which the same were executed by him, be referred to J. M. COALE and WM. PRICE, Esqs. with a request that they furnish a written opinion as to their legal force and effect, and whether any or what action on the part of the board is necessary to annul the same, if, after mature deliberation, it be found expedient to do so.

In accordance with the above order, the following opinion was presented :

To the President and Directors of the Chesapeake and Ohio Canal Company.

GENTLEMEN: Your order of this day requesting our opinion in writing as to the legal effect and force of certain articles of agreement executed by the President of the Chesapeake and Ohio Canal Company, in the name of the company, and under its common seal, with Thomas W. Leston and John Rutter, for the completion of the unfinished portion of the canal between Dam No. 6 and Cumberland, and whether any and what action on the part of the board is necessary to annul the same, if, upon mature deliberation, it be found expedient so to do, having been communicated to us by the clerk, we have considered the said instrument, in connexion with the communication of the President setting forth the authority on which he relies, and present the following as our opinion :

The instrument, being signed by the President and having affixed to it the seal of the company, and purporting, in the body of it, to be the act of the company, bears upon its face all those requisites which are necessary to render it *prima facie* a valid contract of the company.

As the charter of the Chesapeake and Ohio Canal Company, however, expressly confers upon the "President and Directors, or a majority of them assembled," the power and authority "to agree with any person or persons to cut canals," etc., although the instrument in question be signed by the President of the Company, and sealed with its corporate seal, yet the courts may look behind the seal, and if it has been affixed without the authority of a majority

of the "President and Directors assembled," and that fact be made affirmatively to appear, the instrument is null and void.

It appearing from the facts submitted to us that no authority was given by a majority of the President and Directors of the Chesapeake and Ohio Canal Company to the President to sign or affix the corporate seal of the company to the instrument in question, and that they never agreed or assented to said contract, nor authorized the same to be made, it is perfectly competent for the board, if they see fit, now to disaffirm the same and render it null and void.

Corporations, like natural persons, are bound only by the contracts or acts of their agents done and made within the scope of their authority.

The President of this company has no authority *ex officio* to enter into a contract to bind the company.

The mere disaffirmance of the contract by the board will destroy it; and, if application be made, a court of equity will require it to be delivered up to be cancelled.

We cannot perceive, however, that, in a case of this kind, it can be necessary to resort to a cancellation, as, in the event of a disaffirmance by the Board, it is not probable that any attempt will be made to uphold the contract, or apply the instrument to an improper purpose.

If, however, such should hereafter be the case, the interference of a court of equity could then be promptly invoked to cause it to be delivered up to be cancelled.

W. PRICE,
J. M. COALE.

JULY 20, 1843.

The Board then passed the following preamble and resolutions:

Whereas, according to the charter of the Chesapeake and Ohio Canal Company, the power "to agree with any person or persons to cut canals," etc. is conferred exclusively on the "President and Directors, or a majority of them assembled; and whereas it appears that the President of this company has, of his own mere motion, and without authority, signed, and with the corporate seal of this company sealed, a contract or articles of agreement, in the name of the Chesapeake and Ohio Canal Company, with Thomas W. Leston and John Rutter, for the completion of the unfinished portion of the canal lying between Dam No. 6 and Cumberland, in the words following, to wit: [We are obliged from want of room to omit the contract in full.]

And whereas this Board entertain decided and serious objections to said contract:

Because its terms and provisions are substantially the same as those which have been heretofore rejected by the Board.

Because it "pledges and appropriates" "*all the revenues and effects*" of the company, without reservation or restriction, for the payment of the principal and interest of the bonds that may be issued under it, subject only to existing liens, which cover only the

"*nett revenues*," and property: thereby at once depriving the company of the entire and only means which it possesses of keeping up the navigation of the canal, or paying the salaries of the officers, superintendents, lock-keepers, and other agents of the Company.

Because the reservation, "not exceeding twenty per cent," provided to insure the faithful performance of the work, is within that sum made entirely dependent on the opinion of the President and Chief Engineer, contrary to all former usage of the company.

Because no penalty or forfeiture is provided in case of the non performance of the contract on the part of the said contractors, and no guaranty for its fulfilment on their part.

Because, although it is provided in the third section of said contract, that the work therein contemplated shall be commenced by said contractors within sixty days after they shall be required to do so, yet, from the whole scope and object of said articles of agreement, as well as from the express language of the conclusion of said section, it appears that they are not to be required to enter on the execution of the same until "means can be procured for that purpose, or the liens or priorities of the State of Maryland existing on the revenues of the company can be removed or postponed in favor of the bonds to be issued under the provisions of said contract."

Because the execution of said contract would, in the opinion of the Board, increase the difficulties of procuring—if, indeed, it did not entirely prevent—a postponement of the liens and priorities of the State of Maryland.

Because there is no provision in the said contract authorizing the company "to annul the same after thirty days' notice at any time within twelve months after the date of the said contract, on the payment of one per cent. damages upon the unexpended portion of the work," as recommended by the stockholders at their general meeting on the 6th June last.

Because there is no time expressly stipulated for the completion of said work; but it is only provided that "it shall not be required to be done within two years after its commencement."

Because, according to the provisions of said contract, the completion of the canal can in no important manner be secured or expedited by entering into the same at this time.

Because this Board have entertained, and still do entertain the opinion, which is fortified by proposals heretofore made and now on file in this office, that, if means be placed in their hands, or the liens and priorities of the State be postponed in favor of bonds to be issued for the purpose, the canal can be finished to Cumberland at a cost considerably lower than the price in said contract stipulated to be paid, and fully as early as is therein contemplated.

Because a due respect to the rights and opinions of the State of Maryland require that this company should forbear to enter into any contract predicated and dependent upon a surrender of important interests, until after said State shall have announced its consent thereto by legislative enactment.

Because the provision in said contract, in regard to the extension of the work in the direction of Savage river, imposes obligations on the company that may at some future period prove vexatious; they are, at all events, calculated to prevent future competition in case it be found expedient hereafter to make such extension, and impair the free action of the company.

Because the provisions of said contract, in reference to the extension of the work to the mouth of the Savage, would, were the same ratified by the board, bind and oblige the company to pay for the same according to an estimate of its cost made some fifteen years ago, and confine them to a mode of the construction thereof which has long since been abandoned.

Because the said contract is not in the form which has been matured by the experience and established by the uniform usage of this company in regard to the letting of work on the canal, and is, moreover, deficient in numerous provisions and details which have been hitherto found important to the interests of the company, and which ought not to be omitted in a contract of so much magnitude as the present.

And whereas the board conceive the sum of one hundred thousand dollars, even if the same were really expended, as altogether insufficient "to render the unfinished portion of the canal navigable" in any manner, and can perceive no benefit arising from the present expenditure of that sum of money, which can for a moment outweigh their objections to the other provisions contained in said contract as hereinbefore stated.

Therefore, Resolved, That the president of the company, in signing, in his official capacity, the said articles of agreement, purporting to have been entered into on the 13th day of July, 1843, "by and between the Chesapeake and Ohio Canal Company, on the first part, and Thomas W. Letson and John Rutter, of the second part," and in affixing thereto the common corporate seal of the Chesapeake and Ohio Canal Company, has assumed upon himself power and authority not granted by the charter or by-laws of the company, nor authorised by any act or proceeding of this board.

Resolved, That the said articles of agreement and contract be, and the same are hereby disaffirmed by this board, and declared to be null and void.

Resolved, That a copy of the foregoing preamble and resolutions be furnished by the clerk to Thomas W. Letson, and John Rutter, with a request that they deliver up the said articles of agreement to be cancelled.

Resolved, That the clerk be authorised to furnish a copy of the foregoing proceedings for publication.

True copy. Test:

THOMAS TURNER, Clerk,
Chesapeake and Ohio Canal Company.

It is made my duty, as part of this report, that I should express my views of the reasons assigned by the directors, for refusing their

assent to the contract. These reasons, drawn up under the advice of counsel, and published as they were, must be taken not only as the sole, but as, in the judgment of the directors, adequate reasons for their course.

That difference of opinion will occur between gentlemen of purity of purpose and of capacity, is always to be expected. The evil consequences which may result, however, may, at least to a great extent, if not wholly, be avoided, by those feelings of mutual respect and courtesy, which while they will ever prevent the intentional offering of offence on the one hand, will, on the other, preclude the supposition that any such was contemplated. I feel the utmost confidence that in what has occurred, no personal disrespect or discourtesy was designed by either party, and entertain too high an opinion of the parties concerned, to doubt that any such intention would be promptly and frankly disavowed.

While I have therefore, spoken of prejudices, I mean only prejudices of the mind, free from all discourtesy of conduct.

Leaving however this part of the subject, I shall proceed to examine with all the light that my understanding furnishes, with all the sincerity for which I have a right to bespeak confidence, and with a single eye to the interests of the company, and its stockholders, the points of difference which appear to exist between the president and his colleagues of the board.

These points of difference are distinctly stated in the preamble and resolutions unanimously adopted by the board at its meeting on Thursday, the 20th July, 1843. The objections presented in this paper, may be considered as of a two-fold character:

1st—The expediency of making the contract.

2nd—As to the authority under which it was executed.

Having already shown the grounds of authority upon which the president acted, I will now proceed in the examination of this paper of the directors, to treat the question of expediency.

The first objection urged by the board, on the ground of expediency, is that, "it pledges and appropriates all the resources and effects of the company, without reservation or restriction, for the payment of the principal and interest of the bonds which may be issued under it, subject only to existing liens, which cover only the nett revenues &c."

If this be the true construction of the contract, it certainly constitutes a most weighty objection to its provisions, which it would be difficult to justify, either upon the score of expediency or authority. It only remains by an examination of the terms of the instrument to ascertain whether such be its fair or obvious interpretation.

The second article in the contract, after stipulating for the payment of contractors, for the first 100,000 dollars, either in ready money, or in bonds and prescribing the terms of the bonds, should that mode of payment be preferred, contains the following language, in reference to the hypothecation of the revenues of the company to the extinguishment of the debt, "and if payment shall be made

in bonds of the company, the same shall be chargeable on the revenues of the company, *arising from the use of its works between Cumberland and Dam No. 6*; and the said company hereby pledges and appropriates its revenue *to be derived from the before stated portions of its works* to the payment of the principal and interest of the bonds which may be issued as aforesaid, subject only to all liens existing at the date of this contract. The first part, therefore, of the contract, provides for the expenditure of \$100,000, forthwith, for the purpose of rendering the unfinished portion of the canal navigable. This was clearly designed to provide for the immediate use of that portion of the canal, and by temporary works. The contract then stipulated for the entire completion of this unfinished portion of the work agreeable to the plan and estimates of the engineer of the company, at a stipulated price. This amount is to be paid as before, in ready money or in bonds, and in case the latter medium of payment is adopted, the company "pledges and appropriates all the revenues and effects, of the payment of principal and interest of its bonds to be issued as aforesaid, subject only to all liens, existing at the date of this contract." To this article is appended the following clause: "That the company shall and will enter upon the execution of the work contemplated by this article, as soon as means can be procured for the execution of the same, or the liens and priorities of the State of Maryland, existing on the revenues of the company, can be, or are removed, or postponed in favor of the bonds to be issued, under the provisions of this contract."

The 4th article stipulates for the contingent extension of the works of the canal, to or in the direction of the Savage River, and provides for the payment of this portion of it in ready money or in bonds; "and for the payment of the principal and interest of said bonds, the said company hereby pledges and sets apart all its revenues derived from its works aforesaid, westward of Cumberland, as well as the revenues accruing on its works eastward of Cumberland, from the transit and carriage of goods and commodities, delivered on the said works, at any point westward of Cumberland, subject only to the existing liens before mentioned."

From this abstract of the terms of the contract, a copy of which is hereto annexed, it appears that it comprehends three entirely distinct subjects, and makes for each a distinct and substantive provision.

1st. "The performance of work between dam No. 6, and Cumberland to the extent of \$100,000, for the purpose of rendering this portion of the canal navigable." This part of the contract is alone made absolute and obligatory upon the parties, subject to no contingency, and for this the company pledges only the revenues derived from that portion of the canal between the points specified, and which is to be made available for the first time, by the labors of the contractors. Even this provision is made subject to all existing liens.

The 3rd, which is purely contingent throughout, provides for the extension of the canal westward from Cumberland to Savage, and

the revenue pledged for the redemption of the bonds issued in payment of it, is the entire revenues of that portion of the canal executed, and the tolls upon such portion of the ascending trade eastward of Cumberland, as shall be delivered upon that part of the work thus to be made. There being no lien upon this, now existing, there is no reservation of prior lien existing as to the part of the ascending trade which is specified.

It is manifest, therefore, that with regard to the work contemplated and provided for in these parts of the contract, the instrument is wholly free from the objection urged against it.

In regard to the second, and most important part of the work, to wit: the entire completion of the Canal, according to the plan of the Chief Engineer, from Dam Number 6, to Cumberland, and to which alone the objection has any apparent application; it may be remarked, first, that this part of the contract does not purport to be binding on the parties, until either the money funds shall be provided to defray the expense, or the State of Maryland shall agree to waive or postpone her priority of the lien in favor of the bonds, to be issued to the contractors. If the money be procured and applied, the difficulty suggested, cannot arise. If Maryland waives or postpones her priority, and there really exists grounds for interpreting the expression "all the revenues," as meaning the entire and gross receipts, and not the nett income, it is obviously within the power of the Legislature of the State, to require that this ambiguity be removed, and the fair meaning of the phrase be distinctly understood, as a condition precedent to such waiver or postponement on her part.

I do not feel disposed to enter into a verbal criticism, in a matter of so much moment, but cannot refrain from remarking, that the word "revenue," as explained, by the best lexicographers, and as understood by the most accurate writers, means the nett receipts after deducting the ordinary and necessary expenses incident to the collection; such is the meaning which, in my estimation, this word can alone receive in interpreting this contract, not only because such is its ordinary and exact signification, but because, in the very instrument under examination, the same term is used in this restricted sense, in speaking in the same clause, of "the liens and priorities of the State of Maryland on the revenues of the Company."

With this understanding of the true signification of this instrument, I am unable to perceive how it is open to the objection thus urged, or in what essential particular this contract varies from the views presented in the report of General Tilghman, already referred to, and at least impliedly adopted by the stock-holders, in December last, or to those of the resolutions of the Board.

The next objection urged by the Board, is that while the contract restricts the reservation of pay to the contractors, so as not to exceed twenty per cent., as a means of ensuring the completion of the Canal, yet, within that sum the amount is made entirely dependent on the opinion of the President and Chief Engineer, contrary to all former usage of the Company.

This objection, while apparently countenancing the idea that the Board do not entertain that confidence, in these high Officers of the Company, which certainly ought to exist, implies that the Board of Directors are more competent to determine the existence and weight of circumstances, which ought to influence the decision of the question, what proportion of the pay ought to be reserved to ensure the faithful performance of the contract. It is believed that in all cases, the determination of the Board has heretofore been, and in all subsequent cases, probably, will be guided in such matters exclusively, by the report and opinion of the President and Chief Engineer. Of their competency to form a correct judgement under all the circumstances that may present themselves, no doubt can be, or ought to be entertained. I am therefore, unhesitatingly of opinion, that the phraseology of this portion of the contract is an improvement upon the former usage of the company, in as much as it refers the action and imposes the responsibility upon those best qualified to judge upon cases as they arise, and whose views must be, and always have been practically regarded as decisive of the question.

In the next objection, that no penalty or forfeiture is provided in case of non-performance of the contract, and no guaranty of its fulfillment, I am unable to perceive any important difficulty. The contractors may be required to perform the work stipulated for, without any security for payment to them, other than the bonds of the company, in the form prescribed. They may be compelled to leave twenty per cent of their accruing pay in the bonds of the company, as security for their faithful performance of their work. This I should deem an ample security on their part, particularly under the circumstances of the present case, and therefore see in this objection no adequate ground for rescinding the contract, or disavowing its obligatory force. Moreover, I appeal fearlessly to the history of this canal, whether under all its many failures of contractors, the penalty of a bond has ever been exacted or recovered; and to the extensive practice of the General Government whether experience has not proved, that the only effective bond for the execution of the work, is the per centage retained for work done.

The directors have not indicated the grounds upon which they have arrived at the conclusion of their next objection, that the execution of said contract would increase the difficulties of procuring, if indeed, it did not entirely prevent, a postponement of the liens and priorities of the State of Maryland. I will not satisfy myself by a simple impression of opinion, directly in opposition to that of the directors, but will respectfully state the reasons upon which my judgment to the contrary has been formed. It appears to be conceded on all hands, that so long as the priorities of Maryland exist, it will be extremely difficult either to borrow the means to pay for the completion of the canal to Cumberland, or to find contractors to perform that work upon the credit of the company. While those liens exist, there is no fund under the control of the company which

it can offer as a substratum upon which to obtain credit in either way. It may, therefore, be considered as a settled point, that the canal will encounter serious obstacles to its completion, or that priority must be removed. It must be removed either by the action of the Legislature of Maryland, wholly prospective, and reposing an unlimited discretion in the company; or by the same body acting upon a precise and distinctly expressed case submitted to its judgment. The present contract presents such a case, all the circumstances and conditions, and terms, are known, and the Legislature will be called upon simply to determine whether in favor of such a contract they will waive their precedence.

This decision will be either plainly affirmative or negative. In the absence of any arrangement of this or a similar character, the Legislature will be required either to declare its concurrence in an arrangement, the terms of which cannot be known in advance, or to make its approval contingent upon the company being able to make a contract which may prove acceptable. Between these alternatives, if we suppose the Legislature of Maryland to be governed by these ordinary principles of the common sense, which guide men in the administration of their own affairs, there seems no possibility of doubt, and reasoning upon such grounds, I am clearly of opinion that the only practicable means of inducing the Legislature to postpone its lien, is to exhibit to it a precise and distinct proposition, such as is embodied in this contract, upon which it is to determine whether or not it finds in it a sufficient inducement to waive its priority.

The next objection urged by the board, is founded upon an omission to provide for the annulment of the contract within a limited period, upon the payment by the company of a specific amount of damages. This involves a simple question, whether such a clause be of so essential a character that it furnishes an adequate reason for withholding the assent of the company, to the contract that has been executed. If the arrangement be one which will meet with the approbation of the Legislature of Maryland, it may well be doubted, whether under any circumstances it would be within the competency, still more, how far it would be expedient for the company to annul it. Such a power ought only to be reserved, where as in the case of contracts for public supplies, circumstances may arise, where the object to be accomplished by its fulfillment, would cease to be desirable; or where, under other contingencies, the means of payment may become impracticable. It is not easy to imagine any other state of affairs which would justify the use of this power, if retained, and by the terms of this contract neither of them can by any possibility arise. It is then clear to me that it was neither expedient nor proper, that such a reservation should have been inserted among the provisions of this contract. I cannot suppress the expression of the idea, that the directors have very unnecessarily, on this point, and perhaps on some others, considered rather their feelings than their judgement.

The language of the stockholders, on the 6th June, referred to

in the objection, is at the most purely recommendatory. It still left entire discretion where it before existed, and the very fact of simply advising, necessarily implies in the party, to whom such advice is proffered, the right and power to exercise his own discretion on the subject. The omission to do an act, which the party had the discretion either to do or not, as in his judgement might seem best, cannot be considered as an abuse of power, or a violation of instructions. And as some proof that the directors themselves did not consider this point of much importance. I find it omitted, in the declarations, by the directors, of the terms upon which they were willing to contract, as well in those made after the advice of the stockholders as before.*

It is not easy to ascertain the precise scope of the next objection which is urged. It cannot for a moment be supposed, that the honorable and worthy gentlemen who constitute the board of directors, designed even to insinuate that because terms more favorable could now be obtained, that therefore it was either right or expedient to refuse their assent to the contract that had been entered into.† The whole community had an opportunity during the several years, of proffering their proposals, for the consummation of the canal. Such proposals have been industriously sought. The subject has long excited the public mind throughout the whole extent of the State. The present contractors at length came forward, presented their propositions, in my opinion, not only the most favorable to the interests of the company of any that had been offered, but in themselves fair just and liberal. These proposals emanated from men of acknowledged capacity and character, and much experience in their particular business: recommended to confidence by those who are perfectly well qualified to judge them, from the experience of the past.

The contract had under these circumstances been executed, the work had been commenced; the entire control over it was in the hands of the Legislature of Maryland.

It is clear, under these circumstances, that every consideration of fair and honorable dealing, of expediency, of a faithful regard to the best interests entrusted to the directors, united in urging upon them the entire ratification, so far as they were concerned, of this arrangement, leaving to Maryland, the party principally interested, the power of granting or withholding that further authority, without which that ratification would probably avail nothing. But this objection to the price, appears the more singular when it is known that it is the price fixed by the stock-holders, the price stated by the directors, as part of the terms upon which they were willing to contract, and the price which these very directors on the next day

*Except in the declaration after the directors has repudiated the contract.

†Was there ever a contract made, which after being completed and its terms made known, there was not some one who would say he would take it for less.

after reading their objections to this contract, declared themselves willing to contract for.

The difficulties which exist in regard to such parts of the contract, as relate to the extension of the canal from Cumberland westward, towards the mouth of Savage, appear to have originated in an entire misapprehension of the terms of the instrument. No particular plan is indicated by the contract. The whole subject is still open to the discretion and judgement of the Engineer Department of the company, and there is not if we correctly comprehend the paper, any committal either as to the general plan, upon which that extension is to be made, or any restriction as to the details of execution.

It is scarcely necessary more particularly to advert to that part of the contract which looks to the extension of the canal westward beyond Cumberland, as it is wholly contingent in its provisions. It may well be doubted, whether the contractors will ever be disposed to ask for this extension: Should their interest prompt them to require it. The revenues which owe their existence exclusively to that part of the work itself, constitute the only fund pledged for its payment. It must be obvious, in the judgment of every one, that if the tolls upon that portion of the work augmented by those imposed upon so much of the ascending trade as is destined for the extended portion of the Canal will constitute an adequate fund to defray the consequent expenditure, it demonstrates that the benefits to the Canal and the increased revenues growing out of the trade opened by it, beyond what is thus pledged recommend the arrangement to the warmest approbation. The Directors erred, I think in so interpreting this part of the contract, in regarding it as binding the company to any specific plan of construction. It is clearly alternative in its provisions, nor do I consider it, whatever plan of operations may be eventually judged expedient, as imposing upon the company, the obligation to adhere to any particular plan which has already been devised.

The objections of the Directors which refer to the time for completing the work, and to certain details customary in the contracts of the company, are evidently misconceptions, which a careful reading of the contract, will dissipate or are such as could have been easily removed.

Such then are the views to which after the most patient investigation, my mind had arrived before the late meeting, and under which I attended.

The contract in my judgment, presented the only practical and expedient plan for completing the canal, upon such terms as will relieve the State from the present heavy, and prospectively still more burdensome, taxation: nor have I a doubt that if the hearty and just co-operation had been extended to the President by the Board of Directors, which he had a right to expect, and which he ought to have received, the canal would have been completed to Cumberland, within the term of two years from the day on which the work under the new contract was commenced.

And even were it so that some of the provisions of the contract were not as favorable as could have been desired, yet it appears to me, that they were more so than could reasonably have been anticipated. Were this, however, more doubtful, in point of fact, I apprehend that an important step, has been taken in ascertaining by the precise stipulations of an actual contract, the terms upon which practical men, familiar with the business, are prepared to hazard their time, their money, and their labor, in prosecuting to a successful termination, a work which has been twenty years in progress, upon the issue of which, such gigantic interests are involved and to which during some years past, the most sanguine had looked with anxious forebodings, fearing that after all that had been effected after the expenditure of millions, it would not only prove an abortion, but would have behind it an appalling load of debt, grinding to the dust for an indefinite period of time, the honest and laborious tax-payers of Maryland.

The arrangement made by the President, with Messrs. Letson and Rutter, dissipated all these apprehensions. It has shown beyond the possibility of doubt, that the canal is competent to furnish the means for its own accomplishment. That competent men are willing to execute the work, and to rely upon those means to re-imburse their expenditures and to reward their enterprise and labor.

These considerations cannot but address themselves, I think, with irresistable strength to the Legislature of Maryland, by whom the matter will be ultimately decided. That body can now see that no necessity exists for further taxation to bring the Chesapeake and Ohio Canal to a state of completion; that the goal for which she has so long struggled in vain, is now attainable; that the immense additions to her own resources, and to the wealth of her citizens, which had been promised as the rich harvest to remunerate her for all her efforts and losses, are within her power to be realized. And if the contract had been consummated so far as the competency of this company extended, it would have remained for the Legislature of Maryland and for that body alone, to have given to it that ultimate and more perfect consummation which in their judgement upon a specific proposition, known in all its terms and bearings, the interests of the State would have warranted and required.

But before quitting this subject, it seems to me that a comparison between the terms of the contract, and those of the resolutions of the board of Directors, ought to be made.

The terms prescribed by the resolutions are :

1st. To contract for the unfinished part of the canal to Cumberland.

2nd. The contractor to receive the bonds of the company payable in twenty years, bearing interest.

3rd. Ample security for the completion of the contract.

4th. Customary terms and limitations of contracts, as generally expressed in contracts of the company.

5th. The work to be commenced within sixty days after the contract shall have been entered into and be completed within two years thereafter.

6th. Price for the work, two millions of dollars in bonds of the company, or in current funds at the estimate of the Engineer of 1842.

7th. To give the contractor a lien upon the revenues of the canal, subject and secondary to existing liens.

We will now see, whether the contract afterwards entered into by the President, differs in any essential particulars from these terms. It may differ in some unimportant points, as it is not to be supposed, in a bargain of this kind, that one party even expected to succeed in the dictation of every condition.

The following is a synopsis of the contract:

The *first* article provides to commence forthwith, with a contemplated expenditure of 100,000 dollars under the direction of the President, to be expended in rendering the unfinished portion of the canal navigable.

Second, To be paid in money or bonds of the company bearing interest, and payable in twenty years, payments made monthly as the work progresses, according to the estimate of the Engineer, reserving not exceeding twenty per cent., as security for the performance of the contract—payment of the bonds chargeable upon the revenues of the work, “subject only to all liens existing at the date of this contract.”

Third, To complete the canal between Dam Number six, and Cumberland, agreeably to plan and specifications already prepared and approved by the company; the work to commence within sixty days after being required so to do, to proceed with all practicable despatch; the whole may be required to be completed in not less than two years from the commencement of the work.

The company to have the option of paying in ready money, or bonds of the company; proportional payments according to plan and estimates already approved by the company. If in ready money, 1,550,000 dollars, (the estimate of the Engineer,) reduced by any previous partial payments.

If in bonds of the company, 2,000,000 dollars, reduced by any previous partial payments. Bonds payable in twenty years, as aforesaid; revenues and effects of the company pledged for payments, “subject only to all liens existing at the date of the contract”—the parties to enter upon the work so soon as means can be procured for the execution of the same, or the privilege of existing liens be postponed in favor of the bonds for the work.

Fourth, This article relates entirely to the extension west of Cumberland, upon which I have previously remarked.

Fifth, Stipulates to conform to the regulations and stipulations of the company, as inserted in previous and other contracts, in reference to the disposition and management of laborers and others, who may be employed on the work.

Now if this contract be compared with the resolution of the

Board, of the 4th May, it will be found to embrace all the conditions therein prescribed, namely, to complete the work to Cumberland; payments to be made in twenty year bonds of the company, ample security in the per centage to be retained for work as done—customary terms and limitations of contracts; the work to be commenced within sixty days, if required; to be finished in not less than two years, therefore, in two years and one day if required—price of the work 2,000,000 dollars, if in bonds of the company, or \$1,550,000, if in ready money. (The direction of the Board is on this point, “current money,” which in my opinion, is the same as ready money, for I cannot suppose that by current money, “the Board intended the miserable equivoke of paying in any kind of paper, whatever was its discount, the estimate of the Engineer was for specie or its equivalent.) Payments on the estimate of the Engineer; with a lien upon the revenues of the company subject and secondary to existing liens.

The expression in the contract in reference to these liens is clear, being always made subject to all liens existing at the date of the contract.

I think that I have now shown, that the President was not merely authorised to make a contract, but that the one which he has made, agrees in all essential particulars with the conditions prescribed for his government by the directors and that he paid proper deference to the provisions of the charter.

While in this stage of the report, my attention was drawn to the latter part of the 3rd article, in the following words: “and the said party of the first part further covenants, promises and agrees, to and with the party of the second part, that the said company shall and will enter upon the execution of the work contemplated by this article, so soon as means can be provided for the execution of the same, or the liens and priorities of the State of Maryland, existing on the revenues of the company, can be or are removed or postponed in favor of the bonds to be issued under the provisions of this contract.”

This it has been said, may leave the commencement of the work to an indefinite period. I have no such opinion. The provision is evidently one by which the contractors can require the company to order the work when they, the contractors, or any one else, have provided the means; and by which, on the other side, the company can compel the contractors to work when the company has means, by the release or postponement of the liens of the State. The contract is of no value to the contractors unless they do the work, and the presumption, from decided pecuniary interest is that the contractors would raise the necessary means and execute the work as rapidly as practicable. Moreover, these liens on the part of the State, “can be” removed on the meeting of the next Legislature, and if they should not be, the company will then by the very terms of this article, have it in its power, to corrupt the contractor, to go on with the work on his own means, the company paying in its bonds as stipulated.

I readily acknowledge that the board of directors is composed of honorable and intelligent men,—yet however, they are men, and I think there is reason to believe that they have allowed a feeling of offended dignity, to warp judgment and to usurp the place of conviction. Offence has been taken where none was intended, and where none ought to have been supposed. Pride has been offended because a contract was completed before being submitted to consideration, without making the reflection, that previously existing authority, rendered further consultation unnecessary, and that prompt action, to strike while the iron was hot, was essential to success. But be this as it may, the question which the stock-holders had to decide, was not one of error in etiquette, but one of the most momentous character, involving alike the reputation and prosperity of the State, and of all the great private as well as public interests, connected with, and dependent upon the completion of this canal.

To such a question should have been brought cool and clear minds, above all personal considerations and regardless of all. It was such a question, that the stock-holders had to decide, to save the State and all the great interests involved, from impending ruin. The call from all quarters of the State to complete this great work, to render it available, and thereby lessen the suffering which a neglect of it is daily occasioning, should have not been disregarded,—it cannot be without a responsibility more fearful than courage or reason will approve.

I have purposely avoided any remark upon the legal obligation of the contract in its present condition. This is a question which I do not desire to prejudge, nor do I pretend to the ability necessary to reason well upon it. Should it ever be agitated, it will be better before the proper tribunals.

But upon simple principles of common sense, it appears to me, that although the letter of the charter requires the joint action of the president and directors to a contract, yet where such authority exists for the contract, from principal and agent, from stock-holder and directors, as I have laid before you, that a court of equity will remedy the defect.

It was under this apprehension, and with the sentiments and facts which I have laid before you, that I went to this meeting, prepared to remedy the existing evil, and by a compromise of opinion between contending parties, the contractors and the directors, (if the former could be induced to acknowledge such interpretation of the contract as would have done so,) to have removed the objections of the directors and thus to save the canal, and all hopes consequent upon its early completion from the reck with which they are now threatened, if it be not already experienced.

But the denial of a committee of reference before which alone such views could be matured, and the precipitate action upon the resolutions which were offered, left me without opportunity either to explain my views, or to try their feasibility.

It will be observed that I have said nothing of the merits of the

report of the directors, upon which the stockholders acted and which was submitted on the night previous to the adjournment. It is not in my power—I merely heard it read, and read rather badly. From recollection, it was an amplification of the reasons first assigned by the directors, for repudiating the contract; a long narrative about the method of the president in using the seal; and a reference to some old and some late bids going to show that the work could be let for less than the price of the repudiated contract.

My views of the first, have been already laid before you; those of the second, will be very brief. The seal of the company is in the care of the President, he has the right to affix it to an instrument, or direct it to be affixed. He may leave it in the care of a clerk, or a messenger; and if in his manner of using it, he may have shown some hauteur or rude authority, which however, I do not admit, it may be a fault of manner, but cannot make his right the more questionable: as to the third, but little need be said, when we look to the prices stated by the stockholders, also by the directors, in bonds or in specie or its equivalent, for which they were willing to contract, and find that price prevailing, the very last action of the directors on the subject, namely—on the 21st July, the day after the repudiation of the contract, we are forced to the conclusion, that the directors had not themselves, much confidence in the offers to which they alluded.

The total amount of the stock of the company, at a par value, is eight million three hundred and sixty thousand dollars; of which the State of Maryland is a subscriber for five millions, and is also in addition, the creditor for a loan of two millions more. The outstanding debts of the company, may be fairly stated to be 1,500,000 dollars. Its total liabilities, are therefore 11,860,000 dollars. The yearly interest upon this amount is 711,600 dollars, which is the yearly loss in consequence of the incomplete condition of the canal, as but little doubt is entertained, that if it were completed even to Cumberland, it would pay the interest of its cost. To stand still under such circumstances is ruin, and to have stood still so long, is the principal cause of the distress, which the canal interests now experience and of the heavy taxation which Maryland has now to bear. That State alone, as stockholder and creditor, is experiencing a yearly loss of 420,000 dollars, and it would be no difficult matter to prove, that the loss on this account, which that State has already experienced from delay, would have completed the canal, even at a specie valuation of the highest price, in the repudiated contract. How much she is yet doomed to lose by this act of repudiation, I will not venture to predict, but after all her losses, she will be fortunate if the work should be completed on as good terms as those which have been rejected.*

*Every year of delay is a loss to the company of 711,600 dollars, or a loss of 59,300 dollars each month, leaving out of consideration the losses by capitalists and companies of the mineral region, waiting for the completion of the canal. But from these losses to the

As to General McNeill, I acknowledge with pleasure, that in my efforts on this occasion feelings of private friendship were united to conviction of judgement. I have known him for many years, and had I been called upon to select an individual competent to raise this company from its prostrate condition, and to carry it successfully through, I know not the man that I would have preferred; and with all the embarrassments to which he has been subjected, he has shown the path of success to his successor.

He graduated from the Military Academy, for many years an officer of the corps of Topographical Engineers—and equally long, the Chief Engineer to many of the most important civil works of our country, his professional talents are beyond dispute, being proved by his practical operations, and by his many valuable reports. But it was not as an Engineer, that in my judgement, his services were to be estimated by the company; it has already eminent professional men in its employ. But it was in his extraordinary talent to manage those about him, in his singular tact, and in his ability to infuse his own ardent and enthusiastic temperament into all under his control, so that whenever he operated, Engineers, Contractors and others, were seen to be found working up to the maximum of their intellectual, pecuniary, and physical resources. Ardent in temperament, expansive in views, of great experience, and bold in character, he reaches as by a leap, conclusions to which others are arriving by laborious reasoning, and confounds while he succeeds, by the simplicity of his plans.

If in the present case he did not succeed in rallying to his support, those who ought to have supported him, he has at least succeeded in demonstrating on what favorable terms, and in how short a time the canal might have been completed.

I have now sir, brought this long and I fear, tedious exposition, to a conclusion. My anxiety to justify the votes which I gave as United States proxy, will I hope, be received as an apology for its unusual length. But from what I have said it will be seen that I could not approve of the act of the Directors, in declaring the contract null and void, an act which to my judgement, sacrificed the interests of the stock-holders, and the hopes of all those who are looking to the early completion of this canal, to secondary and personal considerations. I could not unite in the assertion that the President in making this contract, had acted “without any color of authority, and in utter disregard of the provisions of the charter,” when such a regular chain of authority, from December, 1842, up to the present period, is to be found in the proceedings of both Stock-holders and Directors, and when the President previously obtained their advice, and duly submitted the contract he had made to the Directors, for that ratification, which he had a right to expect from their previous declarations of the terms upon which they were

company, it will be no difficult matter to calculate, what should be the price of a future contract, in order that it may not be worse than the one which has been rejected.

willing to enter into contract. Nor could I therefore, agree with the agents of the State of Maryland, that it was necessary to change the President of the Company.

When about concluding this report, I received a printed copy of the proceedings of the Stock-holders' meeting, of the 16th. It is sent herewith, in order that the Honorable Secretary may examine both sides of the case, as it will be found that these proceedings consist, almost exclusively, of the report from the Directors in justification of themselves and accusatory of the President of the Company.

Respectfully submitted,

By Sir, your obedient servant,

(Signed,)

J. J. ABERT.

Colonel of Corps of Topographical Engineers.

Honorable J. C. SPENCER,

Secretary of the Treasury Department.

August 28th, 1843.

P. S. The proceedings of meetings of Stock-holders and Directors, to be found in the appendix to this report, are the originals furnished to me officially, by the clerk of those meetings, under an order to that effect from the President of the Company.

APPENDIX III.

(REFERRED TO IN GEN MC'NEILL'S REPORT, p. 21, etc.)

Copy of Contract—Chesapeake and Ohio Canal Company with Letson and Rutter.

Articles of agreement made and entered into this thirteenth day of July, eighteen hundred and forty-three, by and between the Chesapeake and Ohio Canal Company of the first part, and Thomas W. Letson and John Rutter of the second part :

First. The said Thomas W. Letson and John Rutter, parties of the second part for and in consideration of the premises hereinafter recited, have agreed and by these presents do covenant and agree to and with the said Chesapeake and Ohio Canal Company, that they the said parties of the second part will forthwith enter upon the execution of the unfinished portion of the Chesapeake and Ohio Canal lying between the town of Cumberland and Dam number six, and proceed with the same to the extent in value agreeably to the estimates of the President and Chief Engineer of said company, of one hundred thousand dollars, the labor therefor and the said expenditure to be made under the direction of the President of said company, and in such manner if possible as to render the said portion of the canal navigable.

Secondly. And in consideration of the premises aforesaid, the said Chesapeake and Ohio Canal Company, party of the first part, hereby covenant and agree to and with the said parties of the second part to pay them for the labor aforesaid, and the expenditure made by them as aforesaid, in ready money or in bonds of the company, to bear an interest of six per centum per annum, payable semi-annually, and the principal thereof to be paid within twenty years from the date thereof, the said payments to be made monthly from the date of actual commencement upon the work by the parties of the second part aforesaid, as the work progresses and agreeably to the value thereof, according to the estimates as aforesaid, from time to time and with such discount and reservations not exceeding twenty per centum, as may be proper in the opinion of the President and Chief Engineer, as aforesaid, to ensure the faithful performance of the work by the said parties of the second part; and if said payments shall be made in bonds of the company as aforesaid, the same shall be chargeable on the revenues of the company arising from the use of its works between Cumberland and Dam number six; and the said company hereby

pledges and appropriates its revenues to be derived from the before stated portions of its works to the payment of the principal and interest of the bonds which may be issued as aforesaid, subject only to all liens existing at the date of this contract.

Thirdly. And in consideration of the premises aforesaid, the parties hereto mutually covenant and agree to and with each other in manner following—that is to say: The said parties of the second part hereby assume and undertake to complete the residue of the unfinished portion of the Chesapeake and Ohio Canal, lying between Dam number six and Cumberland, agreeably to the plans and specifications thereof, which have been already prepared by the authority of the said company and approved by it; the said work to be undertaken and commenced within sixty days after the said parties of the second part shall have been required by the said company so to do, and proceed with its completion with all practicable despatch; provided the entire work shall not be required to be completed within two years from the date of its commencement as last mentioned. And the said company, the party hereto of the first part, covenants, engages and undertakes to and with the parties of the second part, to pay in manner as mentioned in the second article of this agreement, to the said parties of the second part, for their labor and expenditure to be performed and made as aforesaid, in ready money, or in bonds of the said company, to bear an interest of six per centum per annum, payable semi-annually, and the principal thereof to be paid within twenty years from the date thereof, at the option of the said company; the value thereof, if paid in ready money, to be adjusted agreeably to the aforesaid plans and specifications, and the estimates thereon made under the authority of the said company as aforesaid, that is to say: one million five hundred and fifty thousand dollars reduced by such sums of money as may have been paid or may be payable by the said company to the said parties of the second part, under the preceding article of this agreement; and if in bonds of the company as aforesaid, then the value shall be adjusted for the labor and expenditure performed and made in completing the said canal between Dam number six and Cumberland, at the sum of two millions of dollars, subject to the same deduction as aforesaid. And the said company hereby pledges and appropriates all its revenues and effects for the payment of principal and interest of its bonds to be issued as aforesaid; subject only to all liens existing at the date of this contract. And the said party of the first part further covenants, promises and agrees to and with the parties of the second part, that the said company shall and will enter upon the execution of the work contemplated by this article, as soon as means can be procured for the execution of the same, or the liens and priorities of the State of Maryland existing on the revenues of the company, can be or are removed or postponed in favor of the bonds to be issued under the provision of this contract.

Fourthly. And it is hereby agreed and understood by and between the parties hereto, that whenever the said company shall determine to proceed with its works westward of Cumberland to or

in the direction of Savage river, the parties hereto of the second part shall and may exercise the right and option of assuming and undertaking the construction of the same, agreeably to the plans, specifications and estimates made therefor by the authority of the said company, payment to be made for the labor and expenditure thereon in ready money, or in bonds of the company, similar to those mentioned in preceding article, at the option of the said company, and in manner and detail as mentioned in the preceding article: And if payment be made in ready money, the value of the labor and expenditure aforesaid, shall be adjusted according to the cash amount of the estimate aforesaid; and if in bonds of the said company, at such larger sums as shall bear to said cash amount the same proportion as established in the preceding article for the payments of the works east of Cumberland. And for the payment of principal and interest of said bonds, the said company hereby pledges and sets apart all its revenue derived from the works aforesaid westward of Cumberland, as well as the revenue accruing on its works eastward of Cumberland, from the transit and carriage of goods and commodities delivered on the said works at any point westward of Cumberland, subject only to the existing liens before mentioned; provided only, and it is hereby mutually covenanted, understood and agreed, that at any time after twelve months from the completion of the canal aforesaid to Cumberland, if the revenues therefrom shall not be adequate to meet the interest due and payable on the bonds issued in conformity with this agreement, the party of the second part shall have the right to require that the works westward of Cumberland shall be immediately proceeded with: And the said company hereby covenants and agrees to, and with the said parties of the second part, in that event, to proceed with the said works, according to the true intent and meaning of this article, and to pay the said party of the second part for their labor and expenditure performed and made thereon, agreeably to the stipulations aforesaid, in ready money, or in bonds of the company as aforesaid, subject only to the existing liens as aforesaid.

Lastly. The parties hereto of the second part, hereby covenant and agree to and with the party of the first part, to conform, in the disposition and management of laborers and others who may be employed on the work, to the regulations and stipulations which have been heretofore always inserted in the contracts made by the said Chesapeake and Ohio Canal Company with other contractors for similar work on the said canal.

In testimony whereof, the said Chesapeake and Ohio Canal Company, by its seal, and the signature of its President—and the said Thomas W. Letson and John Rutter, by their hands and seals, have in duplicate, severally executed this agreement on the day and year first hereinbefore mentioned.

Signed, WM. GIBBS McNEILL, [SEAL.]
 Prest. Ches. & Ohio Canal Co.
 THOS. W. LETSON. [SEAL.]
 JOHN RUTTER. [SEAL.]

Witness the above signatures and seals, M. W. SCOTT.

APPENDIX IV.

(REFERRED TO IN GEN. MC'NEILL'S REPORT, p. 14.)

OFFICE OF THE CHESAPEAKE & OHIO CANAL CO.

Frederick City, April 13th, 1843.

To the Directors of the Company:

GENTLEMEN:—In my interview yesterday, at the meeting of the board, there was formally presented to you by me, and placed by your order, among the archives of the company, an authenticated copy of the bill passed by the Legislature of this State for the sale of its interest in several of her Public Works—and among the rest that in the Chesapeake and Ohio Canal.

The occasion was then embraced to state fully, *how* and *why* I thought that bill could be made effective and sufficient to the accomplishment of the only object of which I am aware we are, at this time, constituted directors of the company, to wit: the payment of the just debts of the company, and reimbursement of and future profit to the stock-holders—in the abundant ability consequent on the completion of the canal, in the *speediest, cheapest* and *best* manner. In substance: it was then proposed and is again now proposed—as the only means which occurs to me to effect that object: That a person (in the opinion of the board, competent.) be authorized to proceed forthwith to take such measures as, in his opinion, may be best calculated to the end—which end is to promote and effect the sale of the State's interest in the Chesapeake and Ohio Canal, and to procure the money, or an equivalent, by subscription, or otherwise, for its completion to, or beyond Cumberland; that is, if necessary, (as in my opinion, it will be) to or near the mouth of Savage river.

I therefore, from a deliberate consideration of the subject, respectfully suggest to the board, and recommend for their adoption the following resolution:

“*Resolved*, That be authorized and
requested, and is hereby, fully empowered to take all necessary measures—in person or otherwise—to promote the sale of the State's interest in the Chesapeake and Ohio Canal; and also, to procure the means, under existing laws, to enable the company to complete said canal to, or beyond the town of Cumberland; and that the whole question of pecuniary compensation for expenses consequent, or services rendered, be left to the future determination of the stockholders.”

I am, gentlemen,

Most respectfully, &c.

Signed,

WM. GIBBS MCNEILL,

President Ches. & Ohio Canal Co.

APPENDIX V.

(LETTER FROM THE REPRESENTATIVES OF VIRGINIA, IN THE
CHESAPEAKE AND OHIO CANAL CO.)

Washington, 19th July, 1843.

DEAR SIR,—Having but this moment had an interview with our mutual friend, Mr. M. St. Clair Clarke, and had from him a confirmation of a newspaper notice which met my eye yesterday, in regard to your arrangement for the prosecution of the Chesapeake and Ohio Canal. I cannot refrain, although it has not been my pleasure to have your personal acquaintance, to express to you the great gratification I have felt at hearing of the successful termination of your indefatigable efforts, towards the attainment of an object so momentous in its operation upon the interests, not only of those holding a pecuniary stake in the work, and of those who are to derive advantage from the immense trade to be brought into operation by it, but which may fairly be viewed as of vast national concern—by the conclusion of a contract so well calculated to impart general satisfaction to all concerned.

I heartily congratulate you, sir, upon what you have thus been able to accomplish, and hope (as indeed, I am sure it must,) that it will be hailed by all with joy and gratulation, as affording so bright a prospect of a speedy realization of what they have so long hoped for.

* * * * *

With very high respect,

I have the honor to be,

Your obedient servant,

Signed, .

R. C. MASON.

Gen'l. WM. G. McNEILL,

President Ches. & Ohio Canal Co.

BY THE HOUSE OF DELEGATES,
February 5, 1844.

Read and ordered to be printed.

REPORT

OF THE

AGENTS REPRESENTING THE STATE

IN

JOINT STOCK COMPANIES,

TO THE

LEGISLATURE OF MARYLAND.

IN WHICH THE REPORT OF COLONEL J. J. ABERT, ON MATTERS
CONNECTED WITH THE CHES. & OHIO CANAL COMPANY, IS
REVIEWED AND ANSWERED.
